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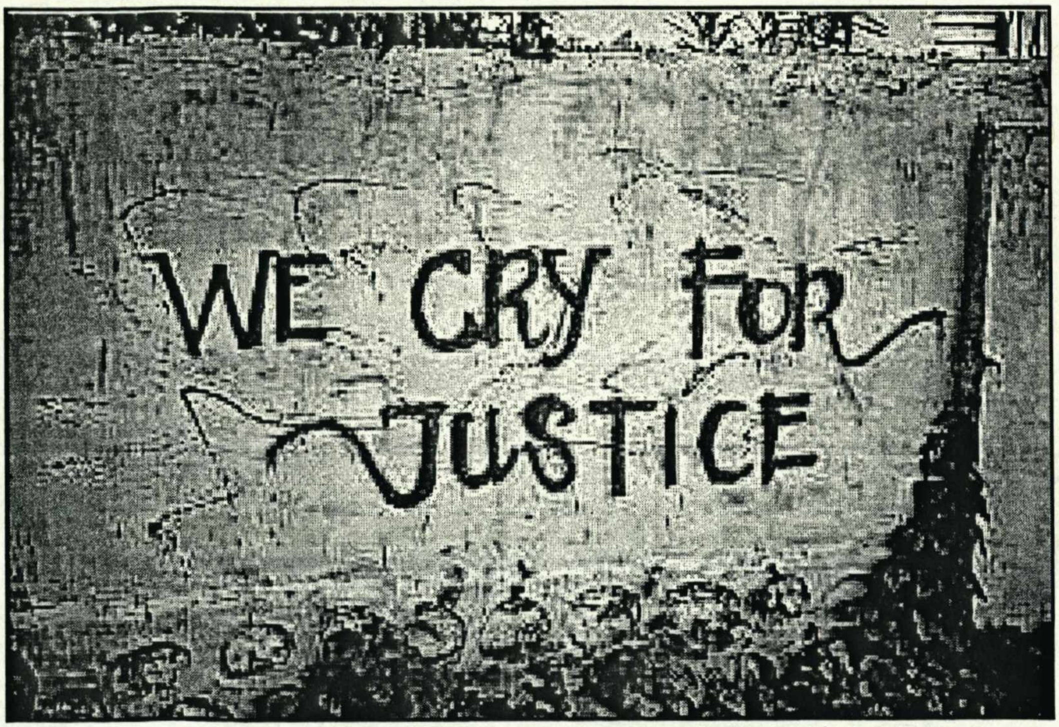
EAST TIMOR

Justice past, present and future



Graffiti on a wall in Manatuto, © Amnesty International

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EAST TIMOR
Justice past, present and future

July 2001 SUMMARY AI INDEX: ASA 57/001/2001
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When the United Nations Transitional Administration in East Timor (UNTAET) was established on 25 October 1999 under United Nations (UN) Security Council Resolution 1272 it was tasked, among other things, with establishing non-discriminatory and impartial institutions, including a judiciary and civilian police force, to ensure that the rule of law be established and to promote and protect human rights.[1]

With only six months to go before UNTAET's mandate expires it is far from completing these key tasks. A mission to East Timor by Amnesty International earlier this year found that law and order is barely being maintained, justice is not being administered effectively and the human rights of the East Timorese people cannot be guaranteed.

The judicial system is only partially established and what does exist is fragile. Members of the fledgling judiciary lack the necessary training and support and are vulnerable to political pressure, including through threats and intimidation. The courts lack basic facilities and by June 2001 only one out of East Timor's four district courts was fully operational. A public defenders service has been established but this small group of lawyers also lacks the support needed to make up for their lack of experience. In addition, the laws that are being applied in East Timor are not always consistent with international human rights standards.

The rights of suspects to a fair trial have been adversely affected by these and other shortcomings of the criminal justice system. Detainees have gone for weeks or even months before having access to legal counsel. It is still not uncommon for individuals to be detained beyond the expiry of their detention orders. The right to trial without undue delay has also

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[1] Report of the UN Secretary-General on the Situation in East Timor, S/1999/1024, 4 October 1999.

been undermined by delays in establishing the judicial system. A disturbing pattern of political interference in the workings of the courts has also emerged which to date has not been adequately confronted by UNTAET or the East Timorese political leadership.

At the same time, the UN Civilian police (Civpol), currently responsible for law enforcement in East Timor, have not always responded effectively where civil disturbances have occurred and in some cases its members have committed violations themselves in their efforts to prevent such disturbances. Failure to confront emerging human rights problems and a widely held perception that UNTAET has been unable to maintain law and order has created opportunities for unofficial security groups to operate.

In the meantime, UNTAET's investigations into crimes against humanity and other serious crimes committed by the Indonesian security forces and pro-Indonesian militia against the supporters of East Timorese independence during 1999 have been unacceptably slow. The Serious Crimes Unit - which is responsible for investigating and prosecuting these crimes - has suffered from a combination of inadequate resources, a shortage of experienced staff, poor management and a lack of political support. The slow pace and questionable quality of its work has resulted in a loss of confidence among the East Timorese in UNTAET's ability or will to bring perpetrators to justice with inevitable negative consequences for the process of reconciliation in East Timor.

Planning is now in progress for UN support to East Timor after 31 January 2002 when UNTAET's mandate ends. A high level of international support will be needed in the coming years to assist the future East Timor government to continue the process of establishing an institutional and legal framework to protect and promote the human rights of the East Timorese people.

One essential component of this support should be a long-term UN human rights field presence to assist the future East Timor government in the task of developing an institutional and legal framework to protect and promote human rights. Among the functions which the international human rights presence should be mandated to perform are:

- to provide legal advice on both existing and new legislation to ensure its compliance with international human rights standards;
- to provide technical assistance to the future East Timor government to ratify and implement human rights conventions;
- to provide human rights training for police, military, members of the judiciary, members of the government and other relevant officials;
- to develop human rights monitoring and documentation capacity in East Timor, including by providing training and mentoring support to local human rights workers throughout East Timor;
- to assist the future East Timor government to monitor the human rights situation in East Timor, including the security of returning refugees, in order to identify any problems which may emerge and to develop effective remedies.

The international community should also assist in the fulfilment of Security Council Resolution 1272 by:

- ensuring that UNTAET is provided with the necessary funds and resources to continue its efforts to establish a functioning independent and impartial judiciary and to develop a legal framework to protect human rights in the final months of its current mandate;

- providing ongoing support after 31 January 2002, including funding, resources and qualified personnel, to ensure that the objectives set for UNTAET are met, including to create non-discriminatory and impartial institutions, particularly those of judiciary and police, and to ensure the establishment of rule of law and the promotion and protection of human rights;

- supporting the establishment, including by providing funds and expert personnel, of a program to monitor in detail the developing justice system from a human rights law perspective. The program should track both ordinary criminal cases and cases which involve serious human rights violations and abuses constituting war crimes or crimes against humanity as well as assess laws and practice in the field. It should publish regular reports and provide detailed recommendations to the Special Representative of the Secretary General and later to the East Timor government on measures required to strengthen the justice system;

- providing an explicit mandate and the necessary resources to continue, accelerate and improve the process in East Timor of investigating and prosecuting crimes against humanity and other serious crimes. It should urge the Indonesian government to cooperate with these investigations and to bring its own nationals suspected of committing serious crimes in East Timor to justice without further delay in trials which meet international standards of fairness. If Indonesia fails in its obligations to bring perpetrators to justice in its own courts serious consideration must be given to alternatives, including an international criminal tribunal.

In the meantime, UNTAET should, as a matter of urgency, take the following action to improve the administration of justice:

- continue to make efforts to establish without delay a functioning judicial system, including by enhancing the practical training for judicial officials in the application of human rights standards, improving on the judicial mentor support program and providing judicial officials with all necessary resources to carry out their duties with maximum efficiency;

- initiate a prompt review of all applicable laws, including UNTAET regulations, to ensure that these fully conform with international human rights standards;

- undertake all necessary practical measures, including establishing training programs, to ensure that the actions of all law enforcement officials fully meet international human rights standards as well as applicable laws;

- undertake an immediate review of the work of the Serious Crimes Unit and make its findings public. Measures to address the problems of the unit in investigating and prosecuting crimes should be taken as a matter of urgency so that it can conduct credible and timely investigations and prosecutions which take into account the systematic and widespread nature of the crimes.

Finally, Amnesty International calls upon the members of the future Constituent Assembly, which is scheduled to be elected on 30 August 2001 and which will adopt a constitution for East Timor, to ensure that there is clear and explicit commitment in the future constitution to protect and promote human rights, including through the ratification of international human rights instruments.

KEYWORDS: INDEPENDENCE OF JUDICIARY1 / LEGISLATION1 / INVESTIGATION OF ABUSES1 / IMPUNITY / POLICE / WOMEN / UNLAWFUL DETENTION / MISSIONS / UN / TRIALS / HARASSMENT /

This report summarizes a 64-page document (26,970 words): *EAST TIMOR: Justice past, present and future (AI Index: ASA 57/001/2001)* issued by Amnesty International in July 2001. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at http://www.amnesty.org and Amnesty International news releases can be received by email:
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EAST TIMOR

Justice past, present and future

1. Introduction

When the United Nations Transitional Administration in East Timor (UNTAET) was established on 25 October 1999 under United Nations (UN) Security Council Resolution 1272 it was tasked, among other things, with establishing non-discriminatory and impartial institutions, including a judiciary and civilian police force, to ensure that the rule of law be established and to promote and protect human rights.[1]

In a report published in August 2000 Amnesty International expressed its concern about the delays in establishing a functioning criminal justice system. The organization warned that institutional and legal weaknesses were contributing to a law and order vacuum the result of which was the emergence of new patterns of human rights violations. The report contained comprehensive recommendations to UNTAET on a wide range of issues, while recognizing the scale of the task. In relation to the administration of justice, UNTAET was urged to accelerate its efforts to establish the legal and judicial framework needed to protect human rights before the problems which were emerging became institutionalized.[2]

A mission to East Timor in March 2001 by Amnesty International researchers revealed that the necessary measures have not been taken with the result that law and order is now barely being maintained, justice is not being administered effectively and the human rights of the East Timorese people cannot be guaranteed.

The judicial system is only partially established and what does exist is fragile. Members of the fledgling judiciary lack the necessary training and support and are vulnerable to political pressure, including through threats and intimidation. The courts lack basic facilities and by June 2001 only one out of East Timor's four district courts was fully operational. A public defenders service has been established but this small group of lawyers also lacks the support needed to make up for their lack of experience. In addition, the laws that are being applied in East Timor are not always consistent with international human rights standards.

The rights of suspects to a fair trial have been adversely affected by these and other shortcomings of the criminal justice system. Detainees have gone for weeks or even months before having access to legal counsel. It is still not uncommon for individuals to be detained beyond the expiry of their detention orders. The right to trial without undue delay has also been undermined by delays in establishing the judicial system. A disturbing pattern of political interference in the workings of the courts has also emerged which to date has not been adequately confronted by UNTAET or the East Timorese political leadership.

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[1] Report of the UN Secretary-General on the Situation in East Timor, S/1999/1024, 4 October 1999.

[2] Amnesty International: *East Timor: Building a new country based on human rights*. AI Index ASA 57/005/00, August 2000.

At the same time, the UN Civilian police (Civpol), currently responsible for law enforcement in East Timor, have not always responded effectively where civil disturbances have occurred and in some cases its members have committed violations themselves in their efforts to prevent such disturbances. Failure to confront emerging human rights problems and a widely held perception that UNTAET has been unable to maintain law and order has created opportunities for unofficial security groups to operate.

In the meantime, UNTAET's investigations into crimes against humanity and other serious crimes committed by the Indonesian security forces and pro-Indonesian militia against the supporters of East Timorese independence during 1999 have been unacceptably slow. The Serious Crimes Unit - which is responsible for investigating and prosecuting these crimes - has suffered from a combination of inadequate resources, a shortage of experienced staff, poor management and a lack of political support. The slow pace and questionable quality of its work has resulted in a loss of confidence among the East Timorese in UNTAET's ability or will to bring perpetrators to justice with inevitable negative consequences for the process of reconciliation in East Timor.

UNTAET's current mandate expires on 31 January 2002. Planning for UN support for East Timor after this date is now in progress. It is therefore a critical moment in which an assessment of needs must be carried out and detailed plans developed for ongoing assistance and support to the building of the new country of East Timor.

Many of the tasks which UNTAET was mandated to perform under Security Council Resolution 1272 have not yet been completed - including the establishment of a judiciary, civilian police force and the rule of law. A continued, high level of international support for East Timor will therefore be required for a number of years in order that UNTAET's mandate can be fulfilled, and secure foundations laid for the new state.

One essential component of this support should be a long-term UN human rights field presence to assist the future East Timor government in the task of developing an institutional and legal framework to protect and promote human rights. Among the functions which the international human rights presence should be mandated to perform are:

- to provide legal advice on both existing and new legislation to ensure its compliance with international human rights standards;
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- to provide human rights training for police, military, members of the judiciary, members of the government and other relevant officials;
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The international community should also assist in the fulfilment of Security Council Resolution 1272 by:

- ensuring that UNTAET is provided with the necessary funds and resources to continue its efforts to establish a functioning independent and impartial judiciary and to develop a legal framework to protect human rights in the final months of its mandate;
- providing ongoing support after 31 January 2002, including funding, resources and qualified personnel, to ensure that the objectives set for UNTAET are met, including to create non-discriminatory and impartial institutions, particularly those of judiciary and police, and to ensure the establishment of rule of law and the promotion and protection of human rights;
- supporting the establishment, including by providing funds and expert personnel, of a program to monitor in detail the developing justice system from a human rights law perspective. The program should track both ordinary criminal cases and cases which involve serious human rights violations and abuses constituting war crimes or crimes against humanity as well as assess laws and practice in the field. It should publish regular reports and provide detailed recommendations to the Special Representative of the Secretary General and later to the East Timor government on measures required to strengthen the justice system;
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- undertake all necessary practical measures, including establishing training programs, to ensure that the actions of all law enforcement officials fully meet international human rights standards as well as applicable laws;
- undertake an immediate review of the work of the Serious Crimes Unit and make its findings public. Measures to address the problems of the unit in investigating and prosecuting crimes should be taken as a matter of urgency so that it can conduct credible and timely investigations and prosecutions which take into account the systematic and widespread nature of the crimes.

Finally, Amnesty International calls upon the members of the future Constituent Assembly, which is scheduled to be elected on 30 August 2001 and which will adopt a constitution for East Timor, to ensure that there is clear and explicit commitment in the future Constitution to protect and promote human rights, including through the ratification of international human rights instruments.

2. The United Nations in East Timor

The United Nations (UN) presence in East Timor dates back to May 1999 when the UN Mission in East Timor (UNAMET) was established to implement a popular consultation in which the East Timorese people were given the opportunity to vote on whether they wished to continue to be a part of Indonesia.[3] The months leading up to the 30 August 1999 popular consultation were characterized by violence as pro-Indonesian militia, supported by the Indonesian security forces, tried to influence the vote by threatening, intimidating and physically attacking independence supporters.

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[3] The popular consultation resulted from the 5 May 1999 Agreements between the Governments of Indonesia and Portugal which had been negotiated under the auspices of the UN. The 5 May 1999 Agreements provided for a ballot, to be implemented by the UN, in which the people of East Timor would choose whether to accept or reject an offer of special autonomy within the Republic of Indonesia. For further information see Amnesty International: *East Timor: Seize the Moment*, AI Index ASA 21/49/99, 21

Despite the difficult circumstances, the vote took place and resulted in overwhelming support for independence. However, there followed an intensification in the violence and, in the weeks immediately after the announcement of the ballot results on 4 September 1999, massive human rights violations were perpetrated against the population of East Timor by the militia and Indonesian security forces, including the unlawful killing of many hundreds of people. Over a quarter of a million people fled, or were forcibly expelled to Indonesia. Tens of thousands of others took refuge in the hills. The pro-Indonesian militia and Indonesian security forces also carried out widespread arson and destruction of infrastructure. Government buildings, including courts and prison facilities, were ransacked or destroyed. On 14 September 1999, having been under siege in its compound in Dili for around 10 days, the UN evacuated all but a handful of its international staff, together with several hundred East Timorese who had sought refuge at the UNAMET headquarters.

There was international condemnation of these events and demands were made to bring those responsible to justice, including by the UN Secretary-General, the UN Security Council, the UN High Commissioner for Human Rights and the UN Commission on Human Rights. A UN International Commission of Inquiry on East Timor (ICIET) was established and both it and a team of three UN Special Rapporteurs made separate visits to East Timor in late 1999. Both concluded that a pattern of serious violations of fundamental human rights and humanitarian law had been committed. Both also recommended the establishment of an international criminal tribunal on East Timor. In the meantime, a multi-national force - the International Force in East Timor (Interfet) - was deployed in September 1999 to restore security and, over the following weeks, UNAMET officials began to return to East Timor.

On 25 October 1999 the Security Council adopted Resolution 1272 which provided for the establishment of the UN Transitional Administration in East Timor (UNTAET). UNTAET is endowed with responsibility for the administration of East Timor and exercises all legislative and executive authority, including the administration of justice, in the territory. Its role also includes the maintenance of law and order, the establishment of an effective administration and to support capacity-building for self-government. Under Security Council Resolution 1338 of 31 January 2001, UNTAET's mandate was extended to the end of January 2002.

Resolution 1272 stressed "*the need for UNTAET to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively...*". The level of East Timorese participation in the government and administration has gradually increased over the months. In July 2000, a model of co-governance was adopted whereby East Timorese

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June 1999.

representatives were appointed to five out of the nine Cabinet positions.[4] In the same month, the National Consultative Council, which had been established in November 1999 and which had both East Timorese and international representatives, was restructured. Its membership was extended to 36 East Timorese unelected representatives and it functioned as the legislative body. In August 2000, the East Timor Transitional Administration (ETTA) replaced UNTAET's Governance and Political Administration Pillar.

ETTA, which is currently the *de facto* government, has a budget of US$65 million for the fiscal year beginning July 2001 which must be divided between many competing demands including education, health, civil service, police and defence forces, justice and infrastructure. UNTAET, which is the support for ETTA, has a budget of some US$560 million per year which, unlike ETTA's budget, comes from assessed rather than voluntary contributions from UN member states. This budget supports the UNTAET mission, including staff and logistics although by far the greatest portion of UNTAET's budget - over 40 per cent - is used to support the 7,765 person strong military component, the Peacekeeping Force (PKF). Under UN regulations, UNTAET's budget cannot be used for governance matters - a fact which many UNTAET officials regard as a serious impediment to their ability to carry out their mission.

The process of completing the transition to full independence is now underway. Elections for an East Timorese Constituent Assembly are scheduled to take place on 30 August 2001. The Constituent Assembly will be responsible for drafting a constitution for East Timor which, it has been recommended should be completed within 90 days of the Constituent Assembly being formed. The date for independence will be set by the new Constituent Assembly but is anticipated to be in early 2002. The National Council was dissolved in mid-July 2001 in advance of the scheduled elections. Politically active Cabinet members were suspended from their governmental functions at the same time. A "technocratic" Cabinet, composed on the current non-political Cabinet members and senior East Timorese civil servants (in place of suspended Cabinet members) continue to handle routine or urgent matters relating to the functioning of the Transitional Administration.

The UN is expected to maintain a reduced presence in East Timor after the territory becomes independent. The exact scale and shape of the presence has yet to be determined, but it is expected to be considerably scaled down. The UN Secretary-General has already acknowledged that significant long-term international support for East Timor will be required. In his report to the UN Security Council on 2 May 2001 he said that "[*w*]*hen East Timor attains independence it will not yet have a fully functional civil administration... many of the skills needed for a fully functioning administration will take years to acquire. East Timor will*

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[4] The five portfolios are foreign affairs, internal administration, infrastructure, economic affairs and social affairs.

therefore continue to need significant assistance to ensure the country's stability".[5] A working group on post-UNTAET planning has been established by the Special Representative of the Secretary General in East Timor. At the UN Headquarters in New York an integrated mission task force has been established to support the working group and coordinate among relevant organizations.

3. Amnesty International's mission to East Timor

A delegation from Amnesty International visited East Timor from 24 February to 11 March 2001. The delegation met with a wide range of UNTAET officials, including the Special Representative of the Secretary General (SRSG) and Transitional Administrator for East Timor, Sergio Vieira de Mello, members of the Judicial Affairs Department, the Office of the Principal Legal Advisor, the Human Rights Unit and the Serious Crimes Unit as well as with members of the UN Civilian Police (Civpol) and UN Peacekeeping Forces (PKF).

Amnesty International also met East Timorese political leaders including the President of the recently dissolved National Council for Timorese Resistance (*Concelho Nacional da Resistência Timorense* - CNRT) and former President of East Timor's legislative body, the National Council, Xanana Gusmão, and with other members of the National Council.[6] Meetings were held with East Timorese judges, prosecutors and public defenders in both Dili and Baucau and with both national and international non-governmental organizations.

Amnesty International is grateful for the cooperation it received and for the frank and detailed discussions which were held. The following report is based on the findings of this mission. Amnesty International hopes that its analysis and observations will make a constructive contribution to the present and future protection of human rights in East Timor.

A copy of the report was sent to UNTAET prior to publication. Amnesty International welcomed the comments made by UNTAET on the draft report. New information which was not available at the time the report was completed has been added as footnotes.

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[5] Report of the UN Secretary-General on East Timor to the Security Council, S/2001/436, 2 May 2001.

[6] The National Council of Maubere Resistance (*Conselho Nacional da Resistência Maubere*, CNRM) was established in 1986 as a non-party political front to unite East Timorese groups which favoured independence. In 1998, the CNRM was replaced by the CNRT and the membership was expanded. It was formally disbanded in June 2001.

4. The Emerging Judiciary

4.1 UNTAET's mandate

Under Security Council Resolution 1272 UNTAET is endowed with overall responsibility for the administration of East Timor, including the administration of justice. UNTAET Regulation No. 1999/1 states that this authority is exercised by the Transitional Administrator in close cooperation with representatives of the East Timorese people.

The urgency of establishing a judicial system was recognized by the UN Secretary-General in his 4 October 1999 Report on the Situation in East Timor in which he stated that there was "*...an urgent need to provide immediate legal advice and to assess the legal and judicial systems, including existing laws and other information which would be necessary in devising a properly functioning administration of justice*".[7] The Special Representative of the Secretary General (SRSG) and Transitional Administrator for East Timor, Sergio Vieira de Mello, also recognized the establishment of a judiciary as a priority. In a statement to the UN Security Council on 3 February 2000 he said that ensuring the physical security of the East Timorese and their access to a fair legal system were among the key objectives that UNTAET had set itself for the first six months.[8]

4.2 Building the judiciary

A modified version of the Indonesian system was adopted as the basic model for the new East Timorese justice system. This decision reflected the fact that all the East Timorese with any legal background had trained under the Indonesian system, using the Indonesian language. Legislation has been passed to set up four district courts, in Dili, Baucau, Suai and Oecusse, to function as the courts of first instance.[9] The single Court of Appeal is based in Dili. A panel of judges within Dili District Court has been established with exclusive jurisdiction over serious criminal offences including genocide, war crimes and crimes against humanity. Two international and one East Timorese judge sit on the Serious Crimes Panel.

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[7] Report of the Secretary-General on the Situation in East Timor, S/1999/1024, 4 October 1999.

[8] Head of Transitional Administration in East Timor Briefs Security Council, UN Security Council Press Releases SC/6799, 3 February 2000.

[9] Originally there had been plans for eight district courts. These plans were later scaled back and, under UNTAET Regulation 2000/14 of 10 May 2000, provision is made for four district courts in Dili, Baucau, Suai and Oecusse. The Baucau District Court has jurisdiction over Baucau, Lautem, Viqueque and Manatuto Districts; Suai has jurisdiction over Cova Lima, Bobonaro, Ainaro and Manufahi (Same); Oecusse over the enclave of Oecusse and Dili District Court has jurisdiction over Dili, Liquiça, Ermera and Aileu Districts.

A public prosecution service was set up under UNTAET Regulation No. 2000/16 of 6 June 2000. Under the regulation public prosecutors are authorised to bring criminal actions before the court and are responsible for conducting criminal investigations, including directing and supervising police investigations. A new element additional to the Indonesian system is the role of investigating judge whose main responsibility is to safeguard the rights of suspects and victims by ensuring that procedures are correctly applied. There is also a small public defenders service.

With the exception of serious crimes cases where there are international judges and prosecutors, an early decision was taken by UNTAET that the judiciary, prosecution and public defenders service should be purely East Timorese, although only a handful of East Timorese had practised as lawyers under Indonesian occupation and there had been only one prosecutor and no judges. A program of fast track training was intended to overcome their lack of experience and enable them to begin practising almost immediately. Judges, prosecutors and public defenders were selected from a small pool of law graduates and an even smaller group of experienced legal professionals. The first group of judges and prosecutors were installed on 7 January 2000. There are currently 24 East Timorese judges, 13 prosecutors and nine public defenders.

Building a judiciary from scratch with only limited human resources available and an infrastructure which had been largely destroyed was an ambitious project which could only be realised with enormous commitment and support. To date the necessary level of support has not been provided with the result that East Timorese judges, prosecutors and public defenders are being required to do a job for which they are not yet fully qualified and for which they lack basic facilities to carry out their duties effectively.

The impact is being broadly felt. It is affecting the morale and confidence of the new judiciary and is feeding perceptions among the general public that the courts are unable to uphold the law and protect their rights. The independence of the judiciary is being threatened and the rights of suspects and detainees are being undermined. In this atmosphere, unofficial security groups have committed human rights abuses, often with impunity.

Of the four district courts, only Dili is fully functioning. The courtroom in Suai is still in the process of being refurbished. Judges, prosecutors and an investigating judge have been appointed to the court but are not sitting on a regular basis although a number of cases from the Suai jurisdiction have been heard in the Dili courtroom placing an additional strain on limited facilities there.

Baucau District Court is open but has had only limited capacity to process cases. Up until April 2001 when a public defender was posted to Baucau, hearings and trials had been delayed because legal counsel for suspects and defendants was not available. Judicial officers in Baucau explained that there had been inadequate transport to enable the public defenders to travel the three hours or so from Dili, no accommodation and initially no facilities for public defenders in the courtroom.

As of early June 2001, there were no public defenders present in either Suai or Oecusse District Courts and, although an investigating judge and a prosecutor are based in Oecusse, there were no trial judges. Because trials currently cannot be heard in the Oecusse District Court, cases have tended to be resolved through mediation even when they clearly involve criminal offences.

Training for the judiciary and public defenders is ongoing. However, it has so far proved inadequate to meet the needs of a newly appointed judiciary which must learn new skills at the same time as, or indeed only after, they are required to apply them. Members of the judiciary complained to Amnesty International researchers that the training had been too theoretical, that they did not always fully understand what was being said because of inadequate interpreting and that they did not always have time to attend because of their workload. Basic, practical training in key areas was only beginning in March 2001. For example, Amnesty International was told that public defenders had received their first practical training in the rights of a suspect in early March 2001 - which may help to explain why legal representation for detainees has been inadequate.

A judicial mentoring program was initiated in May 2000 but has not been as effective as it might have been because of the mixed quality of the international experts appointed and communication problems. None of the mentors have been able to speak Bahasa Indonesia, the working language of the East Timorese judicial officials, and interpreters have not always been available or have not been of a high enough calibre to ensure fluent communication. Also, mentors have come from various judicial systems and judges complained to Amnesty International that they often receive conflicting advice.

Security of tenure for judges and prosecutors has consistently been a contentious issue between UNTAET and East Timorese judicial officials. Rates of pay have been particularly sensitive. In October 2000, judges, prosecutors and public defenders staged a strike in demand of higher salaries. It was resolved at the time by a small increase in salaries but the issue continues to be a cause of tension. It is a prerequisite of any properly functioning judicial system that its staff are adequately rewarded in order to minimise the risks of corruption and interference. In Cambodia, for example, where the salaries of judicial officials are inadequate, the judicial system is compromised by widespread corruption. In East Timor, compared to the majority of the population who are still unemployed, judicial officials might be considered well-off. Nevertheless the monthly salary of even the highest paid judicial officials barely covers the cost of living in East Timor where prices have been inflated by the large international presence.

While remuneration is one aspect of security of tenure, international standards also require that conditions of service are sufficient and adequate facilities are provided to carry out duties with maximum efficiency.[10] Frustration has been fuelled among the judiciary by issues such as the quality of the accommodation provided for those posted outside Dili. In Baucau, for example, three prosecutors were living together in one house in which there was no space to accommodate their families, who had to remain in Dili. One of the prosecutors explained to Amnesty International that it was not that they expected better accommodation than other East Timorese, but that they needed somewhere to live, with their families, with basic facilities such as water and electricity.

There have been repeated complaints about the inadequate number of vehicles provided to the judiciary and public defenders. For example, in Baucau the three prosecutors were sharing one vehicle. With four districts to cover their capacity to exercise their criminal investigative functions with any degree of efficiency is limited if they do not have access to transportation. The work of the nine public defenders was similarly hampered by having only two vehicles between them to cover the whole of East Timor. While lack of vehicles for the public defenders is not the only reason that detainees often do not have access to legal counsel, it is a contributing factor.

The courts also lack basic facilities which continue to have an adverse impact on the ability of judicial and other court officials to do their work. Until recently the nine public defenders shared a single office in Dili District Court which afforded them little space or peace in which to work and allowed them no privacy to meet with their clients. There are no photocopiers in the court registry so documents must be copied outside the court, which although not impossible, contributes to delays. Both prosectors and defenders also complained that they had to pay for witness expenses because there is no system for claiming such expenses in advance - a burden which is not inconsiderable for local officials in view of their relatively low salaries compared to the high living costs.

The management of the courts is also in need of improvement both for the smooth running of the courts but also for the sake of transparency. Among the problems which came to Amnesty International's attention was the difficulty which Civpol have had in obtaining arrest warrants or detention orders from an investigating judge when the courts are closed. The courts are open on each weekday, but close for lunch. At the weekend they are closed except for Saturday mornings. One Civpol officer in Dili explained that Civpol has to catch these short windows of opportunity to get detention orders signed and that, if the 72 hour detention period allowed for police investigation expires on a Saturday afternoon or Sunday, there have been occasions when they have been forced to release suspects or hold them until Monday in contravention of criminal procedures.

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[10] Principle 11 of the UN Basic Principles on the Independence of the Judiciary [Basic Principles] states that: "[*t*]*he terms of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law*." Principle 7 of the Basic Principles states that: "[*i*]t *is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions*". The UN Guidelines on the Role of Prosecutors similarly state that: "[*r*]*easonable conditions of service of prosecutors, adequate remuneration... shall be set out by law or published rules or regulations*".

One of the reasons for the problem is the inadequacy of training. According to the Civpol officer, investigating judges were often unwilling to issue detention orders until the end of the 72 hour period even though Civpol may have completed their investigations earlier. This lack of flexibility meant that Civpol could not request a detention order when the courts are open, even if the 72 hours was due to expire when the court was closed. Clearly judges were aware of the 72 hour rule but had not been made aware that they do not have to wait until the end of the 72 hour period before they issue a detention order. There also appeared to be a resource and management issue involved including creating an effective system of duty judges to ensure 24 hour availability and to provide them with the means by which they can be contacted.

Public information about court proceedings and judgments is also inadequate. Schedules of court hearings are not easily available to the public, judgments are not published and copies of indictments can only be obtained with difficulty. The lack of public information about cases which are before the courts risks undermining the right of suspects to a fair and public hearing. It also effectively reduces the likelihood that members of the general public will develop an awareness of the existence of the courts and their function - a significant point in an environment in which knowledge of and confidence in institutions such as the judiciary are low after centuries of foreign occupation.

4.3 Threats to the independence of the judiciary

The concept of an independent judiciary is a new one for many people in East Timor. Under Indonesia the judiciary was independent in law, but in practice the courts were an arm of government used to detain and imprison political opponents - especially supporters of independence. The Indonesian judiciary was, and still is, widely recognized as suffering from deeply rooted corruption. Unsurprisingly Indonesian judicial officials were held in low esteem by the general public which, quite justifiably, did not regard the courts as being capable of or willing to protect their rights.

The independence of the new East Timorese judiciary is guaranteed in UNTAET Regulation No. 2001/11 on the Organization of Courts in East Timor. However, the historical lack of confidence in the courts and judicial officials persists. Changing such perceptions will depend in part on demonstrating that the East Timorese judiciary is free from the political or economic influences which have compromised their Indonesian counterparts.

Amnesty International does not consider that the East Timorese judiciary receives sufficient support to resist such pressures and indeed is concerned by a number of cases in which there appeared to be evidence of interference in the working of the courts. Already there are indications that some individuals or members of certain groups are above the law, either because of their stature in the community or because they have used threats, intimidation or other forms of pressure to influence proceedings. Although there is currently no evidence that suggests corruption among judicial officials, Amnesty International is concerned that issues around salaries and other conditions of service also have the potential to compromise the independence of the judiciary.

Members of the judiciary have been subjected to threats and intimidation. A number of prosecutors and judges expressed concern about their personal security to the Amnesty International delegation and described various incidents in which they had been threatened. Amnesty International raised these concerns with senior UNTAET officials and with the former President of the CNRT during its visit to East Timor.

Since then there have been other incidents in which members of the judiciary have been threatened. Among the most serious cases was an incident on 30 April 2001 in which a group of 16 youths arrived at Baucau District Court where they threatened to kidnap the President of the court, an investigating judge and prosecutor if a suspect who had been arrested in connection with disturbances in Viqueque District the previous month was not released [see Section 8.2].[11] They threatened to return several days later to check that a release order had been issued and to carry out their threat to kidnap judicial officials if it was not.

As a result of the incident Civpol patrols around the court were increased for one day but there is no permanent police presence either at Baucau or Dili District Courts nor is security provided for judicial officials when they are off duty. Civpol did not immediately investigate the incident, apparently because they had not received a direct complaint from the judicial officials involved. Amnesty International had been informed in March 2001 that judicial officers in Baucau had made several requests to be issued with two-way radios so that they could contact Civpol in the event of an incident arising but had so far not received a response.

On 8 May 2001, just a few days after the incident in Baucau, a group of around 12 men, armed with knives and machetes and some with their faces masked, shouted threats outside Dili District Court. According to one report they threatened to murder judicial and prosecutorial officials and to destroy the court. It is reported that the court guards did not have two-way radios or mobile telephones and were therefore unable to call for additional support from Civpol.

While the origin of such threats is not always clear, there is at least one case where former members of the recently disbanded armed opposition group, the Armed Forces for the

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[11] UNTAET Human Rights Unit Monthly Report, April 2001.

National Liberation of East Timor (*Forcas Armada de Liberacao Nacional de Timor L'Este*-Falintil), or people who claimed to be members of Falintil, are known to have threatened members of the police and judiciary in order to secure the release of a family member.[12] The case related to the gang rape of a woman in Dili in late 2000. Three suspects were arrested shortly after the alleged incident and two of them confessed to the crime. Forensic evidence was also discovered in their vehicle in which the rape had allegedly taken place. Within several days of the arrest two armed men in military uniform, one of them whom claimed to be a Falintil Deputy Commander, arrived at the Civpol headquarters in Dili where they threatened a police officer and demanded that the suspects be released. They were thrown out by Civpol but then went to the Dili District Court where they threatened the judicial officials who were dealing with the case. The suspects were conditionally release in December 2000, although members of Civpol who dealt with the case regarded them to be a threat to the public.

In another case Amnesty International is concerned that East Timorese political officials, including senior members of the CNRT, appear to have used their positions to influence the direction of an investigation. The specific case relates to the burning of 11 houses in the village of Bahalara-Uain (also reported as Buikari village) in Viqueque on 26 September 2000. The events of 26 September 2000 appear to have been triggered by an argument over a cock-fighting contest but are rooted in a long and complex history dating back to the killing of several hundred people by the Indonesian military in Kraras, Viqueque in August 1983. The killings were said to be in reprisal for a reported attack by Falintil in which a number of Indonesian army engineers had died. Surrounding villages were resettled in a place called Klaterek Mutin. The inhabitants of Bahalara-Uain were accused of refusing to support Falintil against the Indonesian military and allegations of collaboration have persisted ever since contributing to tensions in the area.

Allegations of cattle stealing have fuelled these tensions in recent years and in July 2000 it was alleged that 21 buffalos had been stolen by people from Klaterek Mutin from a former village head of Bahalara-Uain village, apparently in retaliation for the theft of buffalos by inhabitants of Bahalara-Uain village some years earlier. In September 2000 there were a number of incidents in which roadblocks appeared around the area. Although it is not known exactly who was responsible or why the roadblocks were set up it is thought to be linked to the disputes between the neighbouring villages.

Late in the afternoon of 26 September 2000 there was a cock-fighting contest between inhabitants of Bahalara-Uain and Klaterek Mutin which ended in a physical fight between the two sides. Later the same day there was an attack on Bahalara-Uain in which 11 houses were burnt down.

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[12] Falintil was officially disbanded on 1 February 2001.

Investigations were carried out by Civpol into the burning of the 11 houses and within a month 13 suspects had been identified. As of the beginning of June 2001 no one had been arrested. Instead, a number of dispute resolution meetings were organized by local officials, but the complainants refused to attend. The complainants have stated that they wish the case to go to court, the General Prosecutor's Office had nevertheless recommended that the case be resolved by "traditional means".

The case, which would normally have fallen under the jurisdiction of Baucau District Court had been taken over by the General Prosecutor's Office because, according to the General Prosecutor, the Baucau District Court was still weak. However, there are also indications that the Baucau prosecutors may have felt intimidated by the political nature of the case and the interest in it by senior East Timorese political officials and were therefore anxious not to have to deal with it. Amnesty International is aware of at least two separate occasions in which there appears to have been inappropriate involvement in the case by East Timorese senior political or military officials and is concerned that this involvement may have influenced the decision not to bring prosecutions in this case.

4.4 Codes of ethics and insufficient judicial oversight

Codes of ethics are an important articulation of the professional standards to which officials are expected to adhere. While adequate training and performance monitoring are prerequisites, the promulgation of a code of ethics can greatly assist judges and prosecutors in knowing what is expected of them as well as informing the legal profession and the general public of what they can expect from such officials. The need for a code of ethics for judges and prosecutors is recognized in UNTAET Regulation No. 1999/3 in which the Transitional Judicial Service Commission is tasked with drafting a code of ethics and submitting it to the Transitional Administrator. Although the code has been drafted, to Amnesty International's knowledge it is still in draft form and has not been promulgated either as a regulation or directive.

The Transitional Judicial Service Commission is also mandated to perform the function of judicial oversight as well as to select and appoint candidates to judicial or prosecutorial office. Under UNTAET Regulation No. 1999/3 the Transitional Judicial Service Commission is empowered to receive and review complaints regarding the professional performance of a judge or prosecutor and advise the Transitional Administrator on any action to be taken, including recommending that officials be removed if necessary.

Proposed amendments to Regulation No. 1999/3 extend the disciplinary powers of the Transitional Judicial Service Commission to include powers to act upon its own initiative to investigate complaints against judicial and prosecutorial officials. If the amendments are adopted, the Transitional Judicial Service Commission will also be empowered to recommend the removal of judges or prosecutors from office for unsatisfactory performance, in addition to other reasons such as sickness, accepting bribes and accepting political office that are contained in the original regulation.

In its August 2000 report, Amnesty International raised its concern that the dual role of the Transitional Judicial Service Commission of selecting officials and of acting on complaints against these same officials could give rise to conflicts of interest. It was recommended that the two roles be separated and the oversight role strengthened. Amnesty International continues to be concerned that independence and impartiality of the judicial oversight function of the Transitional Judicial Service Commission could be undermined because of its involvement in selecting and appointing judicial and prosecutorial officials.

Amnesty International is also concerned by the absence of any mechanism to actively monitor the performance of judges and prosecutors. UNTAET's Human Rights Unit has recently acquired resources to monitor ordinary criminal trials. However, the future of the unit is uncertain and in any case there remains a need for a permanent institution which has adequate resources to effectively monitor the judiciary and to help ensure that judicial and prosecutorial officials are carrying out their duties professionally and are adhering to international human rights law. Such an institution would also assist in identifying problems as they arise and highlight areas where additional support or training is needed.

4.5 Recommendations

To UNTAET:

- ***Training*** - Undertake an assessment of the training needs of judges, prosecutors and public defenders so that future training can be tailored to their specific needs. More substantive training on the practical application of international human rights law should be provided. Efforts should be made to ensure that all training materials are in Bahasa Indonesia and that if interpreters are required during training sessions, that they are qualified legal interpreters.

- ***Mentor program*** - The mentoring program for judges, prosecutors and public defenders should be enhanced. International judges and prosecutors should be placed in each of the four district courts. International experts should be selected to act as mentors on the basis of their skills and experience in civil law traditions and in the application of international law, but must base their mentoring in the effective application of East Timor's laws. They should be provided with qualified legal interpreters so that they can communicate fluently with the officials who they are mentoring.

- ***Security of tenure*** - Security of tenure for judges and prosecutors should be guaranteed both in law and practice so that they are fully protected against political, economic or other pressures.

- ***Security*** - Urgent steps should be taken to ensure that judges, prosecutors, defenders and government officials are protected from threats, intimidation or assault. Immediate action should be taken against anyone who attempts to influence the workings of the courts.

- ***Adequate facilities*** - Judges, prosecutors and public defenders should be provided with adequate facilities so that they can carry out their duties with maximum efficiency. This should include adequate office and transport facilities.

- ***Code of Ethics*** - The Code of Ethics for Judges and Prosecutors should be adopted without further delay. The Code should be consistent with relevant UN standards notably: the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Independence of the Judiciary; Guidelines on the Role of Prosecutors. A Code of Ethics for lawyers should also be developed which is consistent with the UN Basic Principles on the Role of Lawyers.

- ***Judicial Oversight*** - An independent and impartial judicial oversight mechanism should be established without further delay. It is recommended that the dual role currently played by the Transitional Judicial Service Commission of selecting and appointing judicial and prosecutorial officials and receiving and reviewing complaints against them is separated. The oversight mechanism should be able to: examine impartially, and report on the performance of the newly established judiciary and its adherence to international human rights law; receive complaints from the public; initiate and carry out investigations; and to make recommendations for action to be taken against individuals or to reform the system. It should also have the ability to act upon its findings.

- ***Court management*** - Court management should be improved. In particular, trial schedules should be made publicly available in sufficient time so that any interested party such as friends and family of suspects and victims, human rights defenders or journalists can attend the hearings. Verdicts and judgments should be published in the official gazette as a matter of routine. Arrangements should also be made to ensure the 24 hour availability of investigative judges to ensure that Civpol can carry out their duties efficiently and the rights of suspects are not contravened.

To the international community:

- ***Resources for UNTAET*** - Ensure that UNTAET is provided, without delay, with all the necessary resources and personnel to establish a functioning independent and impartial judiciary which is adequately trained in applicable law and human rights standards.

- ***Post-UNTAET support for the judicial system*** - Provide funding and all other necessary support to fulfil the UN's mandate to establish an effective justice system in East Timor. Included in this should be ongoing training for the judiciary and other court officials; funding and qualified personnel to act as mentors; and facilities so that law enforcement and judicial officials can carry out their work effectively.

- ***Justice system monitoring program*** - Support the establishment, including by providing funds and expert personnel, of a program to monitor in detail the developing justice system from a human rights law perspective. The program should track both ordinary criminal cases and cases which involve serious human rights violations constituting war crimes and crimes against humanity. It should also be mandated to assess laws and practice in the field. It should publish regular reports which should be made public and should provide detailed recommendations to the SRSG, and later to the East Timor government, on measures required to strengthen the system.

5. The Applicable Law

5.1 The basis of applicable law

The current basis of law in East Timor is UN Security Council Resolution 1272 (1999) as expressed in UNTAET Regulation No. 1999/1 which states that "*[u]ntil replaced by UNTAET regulations or subsequent legislation of democratically established institutions of East Timor, the laws applied in East Timor prior to 25 October 1999 shall apply in East Timor insofar as they do not conflict with standards referred to in section 2, the fulfilment of the mandate given to UNTAET under United Nations Security Council resolution 1272 (1999), or the present or any other regulation and directive issued by the Transitional administrator.*"[13]

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[13] Section two of Regulation 1999/1 refers to internationally recognized human rights standards, in particular: the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights; the Convention of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In practice there are currently three main sources of law in East Timor - international law and standards, Indonesian law (in as far as it does not conflict with international standards) being the law which was applicable in East Timor prior to 25 October 1999 and UNTAET regulations and directives.

Understandably there is some confusion amongst the still inexperienced judiciary, whose original training was in Indonesian law only, about how to apply laws from a variety of different sources. The confusion is compounded because laws which are incompatible with international standards remain on the statute books and because new UNTAET regulations do not in all cases conform to international standards.

5.2 UNTAET regulations and inconsistency with international standards

A Legislation Committee has been meeting since December 2000 to review draft regulations, including for consistency with international standards, and to advise Cabinet on any necessary changes. The Committee includes representatives from the Cabinet, the Office of the Principal Legal Advisor, the Judicial Affairs Department, the Human Rights Unit and the Gender Affairs department of the National Planning and Development Agency.

The establishment of the Legislation Committee is a positive development and it has already provided important input into regulations, including on the East Timor Defence Force and Penal Institutions. However, there are still insufficient safeguards in place to ensure that all regulations adopted conform to international standards. The Legislation Committee has no legal status and its recommendations can be ignored. It is not always given adequate time to study draft regulations and prepare its comments and, if the enactment of a piece of legislation is considered of great urgency by the Transitional Administrator, the Legislation Committee can be bypassed. There is no equivalent advisory body to the National Council which could help provide an additional level of checking, particularly where the Legislation Committee has no been given sufficient time to review draft legislation fully in advance of Cabinet meetings or where its advice relating to international standards has not been heeded.

Consultation on draft legislation with East Timorese NGOs, lawyers and other local experts on draft regulations has often been inadequate. Although consultations do take place on some regulations, there continues to be no official mechanism by which NGOs or other East Timorese experts or interested parties can obtain draft legislation as a matter of course and provide comments. In view of UNTAET's capacity building mandate and the stated need for UNTAET to consult and cooperate closely with the East Timorese people expressed in Security Resolution 1272, this failure to draw more widely on East Timorese expertise in this important process is regrettable.

Amnesty International heard frequent complaints from both UNTAET officials and East Timorese of the tendency to take a lowest common denominator approach to drafting legislation. That is, making provision only for what it is thought can be implemented in the prevailing conditions of communication difficulties, institutional weakness and economic under-development, rather than aiming for the highest possible standards even if it means developing incremental steps by which they can be implemented over time. This approach risks compromising the process of establishing a legal and institutional framework which would fully protect human rights.

It is already the case that some UNTAET regulations breach basic human rights standards. In one draft regulation compliance with international human rights standards has been made optional which undermines the basic premise of human rights, that they are applicable to all and that there can be no justification for not implementing them. The Regulation on the Establishment of the Police Service, which was adopted by the Cabinet in April 2001 includes a clause which makes it obligatory for the police to comply with international standards only as far as practicable. The regulation was passed at a time when the Legislation Committee was temporarily suspended and therefore did not comment on the draft. In response to criticism from various departments, including the Human Rights Unit, the draft regulation has been returned to Cabinet for amendment. However, there are no guarantees that the Cabinet will agree to review the recommendation in which case it will go directly to the NC for adoption.Should the regulation be passed without amendment the opt out clause would effectively nullify any guarantees for human rights contained in the regulation and would make it almost inevitable that violations will occur in the future.[14]

In other cases provisions within UNTAET regulations which have already been adopted do not meet with international standards. In this regard, Amnesty International has a number of concerns about the Transitional Rules of Criminal Procedure (Transitional Rules) which was adopted on 25 September 2000 (Regulation No. 2000/30). Although the rights of suspects are broadly protected in the Transitional Rules, a number of provisions are inconsistent with international human rights standards.

The Transitional Rules take precedence over, but do not fully replace, the Indonesian Criminal Procedure Code (KUHAP) which still applies where criminal procedures are not specified by the Transitional Rules (in as far as the provisions in KUHAP conform to international standards). This arrangement in itself leads to confusion as to when and why it is appropriate to apply KUHAP. In the absence of clearly defined procedures, Amnesty International noted a tendency for judicial officials to revert to what they know - which is KUHAP - whether or not this should be applied.

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[14] UNTAET informed Amnesty International that the Cabinet has since agreed to amend the draft regulation to delete the words "only as far as practicable".

Specific concerns relating to the Transitional Rules include the length of time before which a detainee must be presented before a judge. Under Section 6.2(e) of the Transitional Rules the police may hold a suspect for 72 hours before they are obliged to present him or her to an investigating judge to request detention orders. International standards require that a hearing takes place promptly after detention. For example, the International Convention of Civil and Political Rights (ICCPR) requires that anyone arrested or detained is brought promptly before a judge.[15] While no time limits are expressly stated within the standards themselves, the UN Human Rights Committee has questioned whether detention for 48 hours without being brought before a judge is not unreasonably long.[16]

The Amnesty International delegation queried the decision to allow the police to hold a suspect for three days before presenting them to a judge with a senior official in the Office of the Principal Legal Advisor. The official explained that the 72 hours provision was only arrived at after a lengthy debate in which pragmatism had prevailed and it was decided that it was necessary to adapt to local conditions.

Conditions during the early months of UNTAET's presence in East Timor did require a level of flexibility which, in most cases, should no longer be necessary now that the Civpol contingent is up to full strength, judges appointed, some of the courts opened and communications improved. The aim should be to minimise the time a detainee is held before being brought before a judicial authority in order to reduce the risk of arbitrary detention and to safeguard against torture and other forms of cruel, inhuman or degrading treatment. By codifying 72 hours in law there is no incentive to work towards the implementation of the highest standards.

Prevailing circumstances have also been an influential factor in the drafting of provisions relating to periods of pre-trial detention in which, for certain cases, there is no specified time limit. Under the Transitional Rules suspects may be held in pre-trial detention for a period of no more than six months from the date of arrest. Under Section 20 Paragraph 11 this period may be extended by three months in cases of a crime liable to a punishment of more than five years' imprisonment. However, Paragraph 12 of Section 20 provides that:

> "*On exceptional grounds, and taking into account the prevailing circumstances in East Timor, for particularly complex cases of crimes carrying imprisonment of ten years or more under the law, a panel of the District Court may, at the request of the public*

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[15] "*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power...*". International Covenant on Civil and Political Rights (ICCPR), Article 9(3).

[16] Report of the Human Rights Committee, vol I, (A/45/40), 1990, para 333, Federal Republic of Germany.

> *prosecutor, order the continued detention of a suspect, if the interest of justice so requires, as long as the length of pre-trial detention is reasonable in the circumstances, and having due regard to international standards of fair trial.*"

Amnesty International is aware of the difficulties faced in bringing suspects to trial expeditiously in a situation where the judicial system is still being developed, but believes the solution is not to provide scope for unlimited detention without any definition of permissible reasons for extending the detention. Indeed Amnesty International believes this is entirely unacceptable and a breach of the human rights obligations which the UN is committed to upholding. Rather than accommodating institutional weaknesses in law, the focus of attention should instead be on ensuring the rapid development of a justice system which can process cases expeditiously, while preserving respect for human rights. In the meantime, the vagueness of this provision leaves the way open to human rights violations, in particular violation of the right to trial within a reasonable time or release.

In Amnesty International's experience, laws designed for transitional periods are often applied for many years after the transitional period. It is possibly that this will be the case in East Timor which is all the more reason that UNTAET should ensure that legislation being drafted now should be compatible with the highest human rights standards.

5.3 Delays in removing incompatible laws

The Criminal Code

The Indonesian Criminal Code (KUHP), with some minor amendments, continues to apply in East Timor, although it contains many provisions which are inconsistent with international standards.

Amnesty International was informed that a number of different UNTAET departments were looking at the KUHP but it was clear that priority had not been given to reviewing it for consistency with international human rights standards. Since Amnesty International's mission to East Timor a working group to review KUHP has been established but had not completed its work before the NC was dissolved in mid-July 2001. The lack of urgency in addressing this issue is all the more surprising given that there have already been a number of cases in which individuals have been arrested on the basis of provisions in KUHP which contravene human rights standards. In at least one case the charges appear to have been politically motivated.

Example 1 - Defamation charges against Takeshi Kashiwagi

Takeshi Kashiwagi, a Japanese national, living and working in East Timor, was arrested on 22 August 2000 and accused of insulting and making a threat against the life of the President of the

CNRT, Xanana Gusmão. Although no evidence was eventually produced to provide a legal basis for his detention he spent 18 days in Becora prison in Dili before being conditionally released on 9 September 2000. He was only finally granted unconditional release a further 10 days later on 19 September 2000.

The case raised a range of issues including the inconsistency of some KUHP provisions with international standards; apparent attempts to limit the right to freedom of expression; and concerns around the independence and competence of the judiciary. It highlighted the need for KUHP to be urgently reviewed and for action to be taken to address other failings within the criminal justice system.

Takeshi Kashiwagi was in East Timor working as a freelance journalist and at the time of his arrest was investigating allegations of corruption among CNRT officials - which it is thought may have had a bearing on his treatment. He was arrested on the instruction of Dili District Court on the basis of an accusation made by a former friend that Takeshi Kashiwagi had made slanderous remarks about Xanana Gusmão and his wife and threatened to kill the CNRT President. There was also a subsequent accusation that he was planning to disrupt the CNRT Congress which was taking place at the time.

The initial investigation in Takeshi Kashiwagi's case involved a range of charges under KUHP, all of which Amnesty International regards to be in contravention of human rights standards on freedom of expression. Among the charges were: Article 154 under which "...the public expression of feelings of hostility, hatred or contempt towards the government..." is punishable by up to seven years' imprisonment. This Article is one of a group of provisions in KUHP which are commonly referred to as the "Hate-sowing Articles" which forbid "spreading hatred" against the government. These articles, including Article 154, have been used extensively in Indonesia over the years to detain and intimidate peaceful political opponents.

The other charges were Article 156 which punishes the public expression of feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia by up to four years' imprisonment and Articles 310, 315 and 316 which relate to defamation. Article 310 punishes by up to nine months' imprisonment the intentional harming of someone's honour or reputation by charging them publicly with a certain fact; Article 315 punishes defamation with a maximum prison term of four months and two weeks and Article 316 provides for the punishments in other defamation articles to be increased by one third if the defamation is committed against a public official. Amnesty International regards the criminalization of defamation to be a disproportionate response and the specific provisions in KUHP do not adequately or clearly define what actions would constitute defamation.

On 23 August 2000, a 30-day detention order was issued by an Investigating Judge at Dili District Court on the basis of the charge of defamation only (KUHP Article 310). (No reference to the threat to kill the CNRT President was made in the detention order, presumably because it is not specifically defined as a crime in KUHP). However, under the single charge against Takeshi Kashiwagi, there were no legal grounds for his continued detention. The charge of defamation, under Article 310, carries a sentence of up to nine months imprisonment. Under the Indonesian Code of Criminal Procedure (KUHAP), which was applicable at the time because the Transitional Rules had not yet been adopted, provision for pre-trial detention only exists for crimes which carry a sentence of five years or more, unless the suspect is considered to be at risk of absconding, repeating the criminal act or damaging or destroying evidence.

Moreover, the criminal charge of defamation, quite apart from being inconsistent with international standards on the right to freedom of expression, did not even apply in this case. Under Article 310 of KUHP a person cannot be charged with defamation except on the basis of a complaint made by the person against whom the crime has allegedly been committed - in this case the complainant would have to have been the President of the CNRT.

Two applications were made for Takeshi Kashiwagi's release by his defence counsel but were turned down in review hearings on 23 and 30 August 2000 on the basis that he might repeat the offence of defamation or commit another crime. On 7 September 2000 the SRSG intervened by issuing an executive order which decriminalized the act of defamation contained in Articles 310 to 321 of KUHP. On 8 September 2000 the UNTAET General Prosecutor seized the case and concluded that there was no legal basis for the detention of Takeshi Kashiwagi. He ordered that Takeshi Kashiwagi be immediately and unconditionally released.

Despite these instructions the charges were not dropped. Takeshi Kashiwagi was granted release on 9 September 2000 only on the condition that he surrender his passport, report weekly to the Dili District Prosecutor and refrain from committing defamation or any other crime. The release was finally made unconditional on 19 September 2000 on the grounds that an accusation of defamation cannot be made by a third party.

Takeshi Kashiwagi has since brought a claim for compensation for unlawful detention against the Investigating Judge and the Head Prosecutor of Dili District Court, the Deputy General Prosecutor for Ordinary Crimes, the Minister of Justice in the Transitional Cabinet and the Special Representative of the Secretary General. On 15 January 2001 a panel of judges at Dili District Court ruled that Takeshi Kashiwagi's detention had contravened the law and that the Executive Order to rescind KUHP Articles 310-321 was also unlawful. They ruled that all the defendants except for the Minister of Justice, who it was concluded was not involved in the legal process, should pay compensation to Takeshi Kashiwagi and costs to the court. The judgment has been appealed.

Example 2 - Militia suspect charged with crimes against the state

A militia suspect, Afonso da Costa, was detained in June 2000 on charges which were described on his arrest warrant as "crimes against the state". He was held by members of the UN

Peacekeeping Forces (PKF) in Bobonaro District for five days where he was interrogated without being brought before a judge and without access to legal counsel. Afonso da Costa was then moved to Becora prison in Dili where he remained for around two months before being moved to Gleno prison in Ermera District. He first saw a lawyer in mid-October 2000, more than three months after he was first detained. He was conditionally released in December 2000.

The exact charges against Afonso da Costa have never been adequately clarified but it is thought that they refer to provisions under Article 107 of KUHP which relate to crimes against the security of the state. Article 107 was added to KUHP by the Indonesian Government in 1999 to replace provisions in the former Anti-subversion Law which had been repealed in April 1999. These recent additions to KUHP, contained in Article 107a-f, forbid the dissemination or encouragement of Communist, Marxist or Leninist teachings; belonging to or supporting any organization which adheres to these teachings; attempting to abolish or change the state philosophy of *Pancasila*; and sabotage.[17] The introduction of these new provisions were regarded as having undermined the benefits of repealing the Anti-subversion Law.

The Anti-subversion Law was formally made non-applicable in East Timor by UNTAET Regulation No. 1999/1 of 27 November 1999. The Office of the Principal Legal Advisor confirmed to Amnesty International that, by extension, Article 107 of KUHP should not apply because the provisions contained in the Article conflict with international standards. However, Article 107 had not been formally removed from the statue book at the time of Afonso da Costa's arrest.

Although Afonso da Costa was conditionally released in December 2000 and criminal proceedings have not been actively pursued, as with the case of Takeshi Kashiwagi, it highlighted the potential risks of arbitrary arrest under provisions of KUHP which are incompatible with international standards. It also reinforced the need for training of law enforcement and judicial officials in the practical implementation of international human rights standards and for more effective safeguards against arbitrary arrest, as well as a thorough assessment of the law and abolition of those provisions which contravene international human rights law.

5.4 Immunity from the law

> "*All are equal before the law and are entitled without any discrimination to equal protection of the law...*" UDHR, Article 7.

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[17] *Pancasila* is the Indonesia state ideology. It embodies five principles - belief in one God, humanitarianism, national unity, democracy and social justice.

Amnesty International is concerned by evidence that certain groups or individuals enjoy immunity from the law and that neither UNTAET nor East Timorese political leaders have taken appropriate measures to prevent this trend from developing. The organization fears this could be the first step towards institutionalising the practice of impunity - a phenomenon which is widely accepted to be at the root of the serious and widespread human rights violations which have been committed over the years by the Indonesian security forces including in East Timor prior to 25 October 1999.

A pattern is emerging which suggests that an individual's status in the community, personal connections or membership of an organization can shield him or her from prosecution or, at the very least, facilitate speedy release from detention. In its August 2000 report, Amnesty International expressed concern about the development of alternative, unofficial mechanisms of law, order and punishment to fill the perceived judicial vacuum. Acts such as illegal detention and torture by unofficial security groups, often with links to political groups or Falintil, have not been effectively addressed in the intervening months resulting in such practices becoming further entrenched.

Amnesty International has documented a number of cases where inadequate action or no action at all has been taken against members of political groups, members of Falintil and members of unofficial security groups who were alleged to have committed crimes, including extortion, illegal detentions, physical assault and rape. There have also been a number of cases where investigations of alleged crimes committed by members of the Church, teachers or others who hold positions of responsibility and respect within the community have not always been rigorous.

There were persistent rumours but little hard evidence of illegal detentions in the Aileu cantonment of Falintil before the armed group was disbanded in February 2001. However, there is confirmed information about a number of people who were held by Falintil for an extended period during the year 2000 as a punishment for their alleged involvement with pro-Indonesian militia. Some of them were badly beaten by members of a local security group when they were initially forcibly detained and were later forced to work for members of Falintil. UNTAET first became aware of the situation in late 2000 and took immediate action to secure their release. However, although investigations were initiated, by June 2001 no one had been arrested either for the illegal detentions or the alleged physical assault.

Cases of human rights abuses committed by members of unofficial security groups have also often not been addressed. A number of what are effectively vigilante groups are involved in performing an unofficial role in enforcing law and order. Some of the groups are linked to political parties or groups, others consist of former Falintil members or take the form of martial arts groups. Those connected to more prominent political groups or to Falintil appear to be able to make use of these connections to escape justice for criminal acts. In other cases members of such groups have tried to avoid justice by threatening and intimidating victims, witnesses or members of the judiciary.

The issue of unofficial security groups first received attention because of the involvement of the CNRT's security structure, the People's Security Force (*Forcas Seguranza Povu*, FSP) and the CNRT Information Section in screening returning refugees for suspected militia members and investigating past human rights violations. These activities were unofficially tolerated by UNTAET and in many cases the CNRT and their security group assisted Civpol in identifying individuals alleged to have been involved in the 1999 violence and contributed to the process of reintegrating others back into their communities. However, there were also a number of cases in which returning refugees were threatened, intimidated, illegally detained or assaulted by CNRT members or groups associated with them. There have also been a number of reports of returnees being killed ostensibly because of their alleged links with militia groups or because of their pro-Indonesia political sympathies.

Reports of such problems have decreased in recent months. However, a number of past cases have not been satisfactorily resolved giving the impression that such acts will be tolerated. In the case of one young man who was beaten and stabbed after returning from a refugee camp in West Timor, Indonesia to Liquiça in February 2000 none of the suspects, who included members of the CNRT and a former member of Falintil, were brought to justice. The victim, who was accused of being militia member, survived the attack but his family were threatened and told not to report the incident. According to reports the case was resolved through a traditional dispute resolution meeting in the local community.

In another case six refugees were illegally detained in Oecusse District in November 2000 by members of the CNRT after they had returned from West Timor. Two men suspected of having belonged to a pro-Indonesia militia group were forcibly taken from their home on 1 November 2000. They were beaten before being handed over to Civpol. On the same day, another four returnees to Oecusse were handed over to Civpol after being illegally detained for several hours. Criminal investigations were initially pursued but the case is reported to have been resolved by the prosecutor in Oecusse in March 2001 outside of the court. It is not know why this course of action was taken in this case but the fact that the Oecusse District Court is not functioning is thought to be a contributing factor.

Amnesty International was also concerned to learn of a case in which political influence or connections appear to have been used to obtain conditional release. The case is something of a *cause célèbre* in East Timor because it involves a high profile figure who had been a senior official in the East Timor Transitional Administration (ETTA) before being forced to resign because of his alleged actions. The suspect, who is accused of physically assaulting his wife, was arrested in early February 2001 but was released the same day when the judge turned down the request for a 30-day detention warrant despite being informed of a long history of escalating violence against the alleged victim and of Civpol's concerns that they would be unable to enforce the terms of the conditional release. A Civpol officer involved in the case said that the judge had appeared visibly intimidated in court. One of the terms of the release is that the suspect should report bi-weekly to Civpol. As of the beginning of March 2001 he had failed to fulfil this condition and indeed had spent a number of weeks abroad, including in Singapore, accompanying the President of the CNRT. To Amnesty International's knowledge no action was taken at the time against the suspect for breaking the terms of his release and, in the meantime, the victim was reported to be in hiding. At a pre-trial hearing on 10 July 2001, a judge ordered the suspect to be detained until the trial which is expected to commence within a matter of weeks.

Amnesty International also received information about a number of cases in which priests or others with a similarly high status in the community were alleged to have been involved in criminal acts, including physical assault, but against whom criminal proceedings had not been pursued. In one case, a priest was accused of being involved in an incident in early 2000 of kidnapping, beating and burning with cigarettes two children who had allegedly stolen a goat. Criminal investigations into this case appear to have been dropped.

Amnesty International is extremely concerned that examples such as these are undermining efforts to establish the rule of law in East Timor and have already established a worrying precedent for the future. The lesson drawn from the examples above - and others not documented in this report - by ordinary East Timorese and by those who will soon exercise power over them, is that a two tier system of justice operates, depending on one's position in society, and that the UN endorses such a system.

5.5 Accountability of UN personnel

UNTAET Regulation No. 1999/1 states that "... *all persons undertaking public duties or holding public office in East Timor shall observe internationally recognized human rights standards...*". However, in practice there is a lack of institutional and personal accountability of both the UN, the PKF and their personnel in East Timor.

In its August 2000 report, Amnesty International emphasised the urgent need for systems of accountability to be set up to ensure allegations of human rights violations made against UNTAET officials could be immediately and impartially dealt with. In particular, it was recommended that the establishment of an Ombudsperson's Office should be given immediate priority. At the time of Amnesty International's visit to East Timor in March 2001, an Ombudsperson had been appointed, but he was not in the country and legislation which would define the powers and scope of the role of this office had not been adopted.

In UNTAET's Daily Briefing of 1 June 2001 it was reported that 20 cases, half of which had been brought forward by East Timorese, were currently being examined by the Office of the Ombudsperson which had become operational in May 2001. Amnesty International welcomes the fact that the Ombudsperson's Office is now open but is concerned that there is still no regulation to establish its legal status and define its powers and authority. Without this it is unclear on what legal basis the Ombudsperson's Office is operating, what processes it will apply to its work and what authority it will have to make recommendations and ensure that they are acted upon. In the meantime, delays in establishing the office and the current lack of clarity have contributed to a widespread perception among East Timorese that UNTAET and its officials are not accountable. These perceptions have been reinforced by a number of cases in which UN officials suspected of committing a criminal offence have not been brought to trial.[18]

A recent report issued by the Ombudsperson for Kosovo has particular relevance to the status of UNTAET, the PKF and their personnel in East Timor. In the report the Ombudsperson notes that the main purpose of granting immunity to international organizations in peacekeeping operations is to protect them against the unilateral interference by the individual government of the state in which they are located, but goes on to make the point that this rationale does not apply to the circumstances in Kosovo where the interim civilian administration (the UN Mission in Kosovo - UNMIK) in fact acts as a surrogate state. He notes that the blanket lack of accountability which is afforded by UNMIK Regulation 2000/47 on the Status, Privileges and Immunities for the Kosovo Force (KFOR) and UNMIK and Their Personnel in Kosovo, paves the way for the impunity of state. According to the Ombudsperson:

> "*With regard to UNMIK's exercise of its executive and legislative powers for the purpose of granting itself and its security counterpart immunity, the Ombudsperson recalls that the fundamental precept of the rule of law is that the executive and legislative authorities are bound by law and are not above it. He further recalls that, therefore, the actions and operations of these two branches of government must be subject to the oversight of the judiciary, as the arbiter of legality in a democratic society. Finally, he recalls that these precepts govern the relationship between the state and the individual, who is the subject and not the object of the law. UNMIK Regulation 2000/47 contravenes all of these principles*".[19]

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[18] UNTAET informed Amnesty International that it was decided by Cabinet members in a meeting on 27 June 2001 that it would not be appropriate for an unelected Cabinet to decide on the institution of an Ombudsperson so soon before an elected Constituent Assembly would be considering the creation of a democratic government for East Timor. The legislation was rejected and the Ombudsperson will therefore operate under terms of reference provided by the Transitional Administrator until a regulation is considered by an elected body.

[19] Ombudsperson Institution in Kosovo, Special Report No.1 on the Compatibility with Recognized International Standards of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo (18 August 2000) and on The Implementation of the Above Regulation.

Although UNTAET has not regulated for immunity for UNTAET and PKF personnel, in practice reports indicate that they enjoy a high level of immunity. Given that UNTAET's status is similar to UNMIK's in that it exercises executive and legislative powers, the observation that the rationale for granting immunity does not apply in Kosovo is also relevant to the situation in East Timor.

Amnesty International reminds UNTAET that its actions today lay the foundations for the future conduct of law enforcement and the process of justice in East Timor and that there can be no excuse for upholding anything other than the highest standards.[20]

5.6 Recommendations

To UNTAET:

- ***New UNTAET Regulations*** - Ensure that all new UNTAET regulations are fully consistent with international human rights law and standards. Under no circumstances should there be provision in legislation for these standards to be made optional or otherwise lowered.

- ***Legislation Committee*** - The role of the Legislation Committee should be formally recognized and it should be given a clear mandate to ensure that all legislation adopted by UNTAET is compatible with international human rights standards. Its role should be strengthened so that it is consulted as a matter of course and its recommendations are acted upon. It should be given powers to recommend the enactment of new legislation necessary to protect human rights.

- ***Review of existing UNTAET Regulations*** - A review of existing UNTAET regulations should also be undertaken to assess their compatibility with international human rights standards. Among the regulations which should be prioritised for review is the Transitional Rules of Criminal Procedure (Regulation 2000/30). Provisions under this regulation which may facilitate human rights violations or are otherwise inconsistent with international human rights standards should be immediately amended. In particular:

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[20] UNTAET informed Amnesty International that two members of Civpol came before Dili District Court on 6 July 2001 in relation to accusations that they had raped an East Timorese woman. The two are currently in detention. Amnesty International welcomes the measures taken to ensure the investigation and prosecution of the individuals concerned in this case.

  - Section 6.2(e) of the Transitional Rules should be amended so that the period before a detainee must be presented before an Investigating Judge is reduced from 72 hours to a level compatible with international human rights law.

  - Section 20, Paragraph 12 of the Transitional Rules, which provides for an unlimited period of pre-trial detention, should be amended so that the risk of arbitrary detention under this provision is removed. Factors which would help determine the reasonableness of a period of pre-trial detention should be clearly defined and should include, the seriousness of the offence alleged to have been committed; the nature and severity of the possible penalties; and the danger that the accused will abscond if released. Other factors which should be examined are whether the authorities have displayed due diligence in the conduct of the proceedings, the complexity and special characteristics of the investigation and whether continued delays are due to the conduct of the accused or the prosecution.

- ***Review Indonesian legislation*** - Initiate a review of Indonesian legislation which is in use in East Timor. Priority should be given to reviewing the Criminal Code (KUHP) from which the Hate-sowing Articles and other provisions which are inconsistent with international standards should be removed. Other provisions, such as those on gender-based violence, including rape and domestic violence should be strengthened so that they provide effective protection against such crimes and effective remedies to victims [See section 7.1].

- ***Immunity from the law*** - Measures should be taken to ensure that no one enjoys immunity from the law. Police investigations should be carried out into all allegations of criminal or other illegal acts regardless of who is alleged to have committed them and individuals should be prosecuted if there is sufficient evidence. UNTAET and the East Timorese political leadership should make public their support for the rule of law, including by condemning attempts to use influence or position to avoid criminal responsibility.

- ***Accountability of UN personnel*** - The actions of UNTAET personnel should fully meet international human rights standards as well as applicable laws. All allegations against them should be immediately and independently investigated and appropriate action taken if there is found to be evidence of wrongdoing.

- ***Ombudsperson*** - Immediately adopt legislation to give legal status to the Ombudsperson's Office and to define its role. This role should including receiving and investigating complaints against UNTAET and its officials, as well as conducting investigations on its own volition. Mechanisms should be established to ensure that recommendations made by the Ombudsperson's Office on the basis of its investigations are enforced. A system for making reparation, including compensation, to victims of human rights abuses or to victim's families should also be set up.

The Ombudsperson's Office should be established as a permanent institution which will continue to function after East Timor becomes independent as a mechanism to independently investigate complaints against the government and its officials.

To the international community:

- ***Ratification and implementation of international human rights conventions*** - Provide assistance to the future East Timorese government to ratify and implement all the key international human rights standards including the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the ICCPR; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol to CEDAW; the Convention on the Rights of the Child (CROC) and the Rome Statute of the International Criminal Court (Rome Statute). Assistance should also be provided to ensure that all new legislation conforms to international human rights standards and that these standards are implemented in practice.

- ***Training*** - provide ongoing training on international human rights standards and their implementation to law enforcement officials, government representatives, parliamentarians and other relevant groups.

- ***Support to non-governmental organizations*** - Provide non-governmental organizations (NGOs) with support, including training in international human rights standards and relevant UN mechanisms, to assist them in their legitimate role in building a human rights culture in East Timor, including through monitoring and reporting on the human rights situation.

6. Arbitrary Detention and the Rights of Suspects

UNTAET's record on ensuring the rights of detainees during its first months was mixed. Although many of the problems were inherited, UNTAET was not always as quick as it might have been to address them.

Detention facilities had been destroyed in September 1999 by the Indonesian security forces and militia as they withdrew from East Timor and, until May 2000, there was just one facility in Dili for the whole of East Timor with capacity for only a few dozen detainees. The capacity crisis was such that by April 2000 Civpol were forced to declare a moratorium on arrests. Recruitment of Civpol also took time and they were short of key resources including vehicles and translators, a situation which undermined its ability to carry out its duties effectively. In the meantime, the International Force in East Timor (Interfet) was required to carry out law and order functions including arrests and, until January 2000, to oversee the detention facility. For many months there were no agreed guidelines on, or training in procedures for arrest and detention. Without a judiciary or functioning courts reviews of detention were irregular and detainees did not have access to legal counsel.

The situation has improved since then. A program of prison refurbishment is close to completion and there are now three detention facilities, in Dili, Baucau and Gleno, with potential capacity for up to some 460 detainees and prisoners. Although work remains to be done, including providing separate detention facilities for women and children, the penal institutions are a testimony to successful planning and capacity building. When Amnesty International visited the Gleno and Baucau detention facilities in March 2001, it found the facilities to be basic but good and the program of training for local staff by New Zealand prison officers to be well advanced. Amnesty International was pleased to note the skills brought to East Timor by the New Zealand prison staff in order to ensure genuine capacity building for the East Timorese prison officials.

The Civpol contingent is also now up to full strength and the adoption of Regulation No. 2000/30 on the Transitional Rules of Criminal Procedure has at least clarified procedures even if these procedures are not always fully consistent with international standards. The courts are also now open, if not fully functioning. Nevertheless problems still persist which negatively impact on the rights of detainees.

6.1 Violations of the right to legal counsel

Inadequate access by detainees to legal counsel is an extremely serious problem and one that also illustrates the multiple and complex range of issues which must be tackled in developing a criminal justice system in East Timor which protects fully the rights of both suspects and victims.

The right to legal representation is provided for under UNTAET regulations. The Transitional Rules state that immediately upon arrest, a suspect shall be informed of his or her right to contact a legal representative and communicate with this representative confidentially (Section 6.2(c)); that suspects have the right to have a legal representative appointed without charge if the suspect is unable to pay for a lawyer (Section 6.2(d)); and that suspects have the right to be questioned in the presence of a legal representative, unless the right is waived (Section 6.2(f)).

In reality, detainees often do not have access to legal counsel for weeks or even months. It is exceptional for detainees to have access to legal representation during the 72 hours permitted for police detention. Only one out of a group of four public defenders who Amnesty International met said that they had ever seen a client during this initial period of police investigation. Members of Civpol also admitted that it is unusual for suspects to request legal representation. Various Civpol officers explained that detainees are informed of their rights, often twice, but some also admitted that they didn't think that the detainees fully understood. In the words of one Civpol officer "*we tell people why they are arrested and what their rights are, but most of them have no idea what we are talking about. The concept is foreign to them. We go through the motions but the understanding is not there.*" A Civpol officer in Baucau explained that he offered detainees a public defender but also had to explain at the same time that, because there was no public defender attached to the Baucau District Court, they would not be able to come immediately. He said that he would also suggest that a family member could accompany the detainee but that most detainees refuse this option.

The Baucau based public prosecutors also expressed their concern about the situation. They explained that in order to fulfil their duties to conduct criminal investigations they felt they had no choice but to explain to suspects that there was no public defender available and to ask if they would agree to being questioned without a lawyer so that the investigation could proceed. The situation had been so acute at times that one of the public prosecutors said that he felt compelled to intervene in several cases where there was no public defender. In one case a detention order had expired so he took on the role of the public defender and submitted a request for the suspect to be released. In another case he submitted a request for release on behalf of a detainee who was mentally ill. It is hoped that this situation will have been at least partially alleviated by the appointment of a public defender to Baucau District Court in April 2001.

In December 2000, representatives of the Law, Human Rights and Justice Foundation (*Yayasan Hukum, Hak Asasi dan Keadilan* - Yayasan HAK), a well respected local human rights organization, visited Gleno Prison in Ermera District where they found that 15 out of the 63 detainees had not been appointed legal counsel. Among the 15 was one person who had been detained since 17 March 2000 and had therefore been without legal counsel for some eight-and-a-half months. Another person who had been arrested in early May 2000, four in August 2000 and another four in September 2000 had not seen a lawyer by December 2000. On 2 March 2001, Amnesty International interviewed ten detainees in Baucau prison of whom six claimed not to have seen a public defender. Two of the six had been in detention since late 2000 and three since January 2001.

In general, defendants are represented in pre-trial hearings and at their trials. However, Amnesty International did learn of one case in Oecusse in December 2000 in which three men, who had been charged with assault were tried without legal counsel. One of the three was acquitted and the other two found guilty but released conditionally. Amnesty International believes this case illustrates the impossible position of the presiding judge, who is faced with the dilemma of conducting an unfair trial, or holding no trial at all. By June 2001 there was still no public defender at Oecusse District Court.

Poor management, limited human resources, the public defenders' lack of experience and support and a general lack of rights awareness among the East Timorese population all contribute to the situation described above. The pool of public defenders, who represent most criminal detainees in East Timor, is small and still inexperienced. They have had only limited time to learn their duties and have had less mentoring support even than the prosecutors or the judges. In addition, heavy case loads makes it difficult for them to give full attention to training that is offered. Mechanisms for informing public defenders that their services are required appear to be inadequate. At the same time, the defenders themselves are often slow to respond to requests to visit suspects in detention and when they do visit they are not fully aware of the scope of their role.

The situation also has a historical dimension which highlights the need for a comprehensive program of public education on the criminal justice system in general and the rights of suspects in particular. Under Indonesian rule it was rare for detainees to be permitted access to legal representation particularly in the days immediately after arrest. Nor were they generally given the opportunity or facilities to prepare a defence on charges brought against them. Members of a detainee's family or friends who attempted to inquire after them risked being threatened or even detained themselves. Not surprisingly, many of those detained now are unaware of their rights and, if they are, they may be unwilling to assert them for fear that they or their family members may be placed at risk.

In view of this lack of rights awareness Amnesty International is concerned that the Transitional Rules of Criminal Procedure allow the right to legal representation to be waived, without further safeguards to ensure that suspects are fully aware of how legal assistance can be important in safeguarding their rights, particularly the right against self-incrimination. More generally, Amnesty International is concerned that delays in providing detainees with access to legal counsel creates a risk of human rights violations, including torture or ill-treatment.

6.2 Expiry of detention orders and excessive periods of pre-trial detention

Unlawful detention resulting from detention orders having expired and not being renewed in a timely fashion is another common problem. According to UNTAET's Human Rights Unit (HRU) the situation is improving month by month but is not yet satisfactory. The HRU reported that, on 19 March 2001, there were a total of 26 people in the three prisons whose detention warrants had expired. This was a considerable improvement on the figures for the end of January 2001 when 103 detainees who were being held unlawfully because detention warrants had not been renewed.

Some detainees have also been held for excessively long periods before being brought to trial. This situation has been most acute in cases relating to serious crimes committed in 1999, where lack of capacity and administrative problems at each stage has contributed to long delays in bringing suspects to trial. One of the more extreme examples is the case of a group of nine suspects who were arrested in relation to the killing of a group of nine people including priests and nuns near the village of Verokoko, Los Palos District on 26 September 1999. Five of the nine have been in detention since late 1999.

Joni Marques, Manuel da Costa, João da Costa, Paulo da Costa and Amelio da Costa were arrested by Interfet in October 1999. The other four were arrested the following year or in early 2001: Gonsalo dos Santos was arrested on 30 September 2000; Alarico Fernandes and Gilberto Fernandes were arrested on 8 and 9 October 2000 respectively and Mautersa Monis on 4 January 2001. Another person, Hilario da Silva was arrested on 5 June 2000 but has since been conditionally released.

On 11 December 2000, an indictment was filed charging the nine detainees, Hilario da Silva and Syaful Anwar, an Indonesian army officer Special Forces Command (Kopassus), with crimes against humanity, including murder, torture, deportation and forcible transfer of civilians in Los Palos between 21 April and 25 September 1999. A pre-trial hearing was scheduled to take place on 6 March 2001, but was postponed to 3 May 2001 because the evidence had not been translated from English into Bahasa Indonesia, the working language of the defence lawyers and also a language which can be understood by the defendants. The written evidence, consisting of some 560 pages, had been returned in advance of the hearing to the prosecution by the defence team who claimed it was the responsibility of the prosecution to translate it. The prosecution argued that it was the responsibility of the court but was overruled and the hearing was postponed until the prosecution made translations of the evidence available to the defence lawyers. The trial began in the first week of July 2001.

The early detention history of Joni Marques and the four others arrested by Interfet is unclear and it is not known if their detention was reviewed during the two to three month period they spent in Interfet detention. However, it is known that the five first came before an investigative judge at Dili District Court on 9 February 2000. The others, who were arrested later by Civpol came before a judge within 24 hours of being detained. Thereafter, up until late in the year 2000, reviews of their detention are thought to have taken place regularly, although there may have been some short periods when extension orders were not granted immediately after existing detention orders had expired.

On 30 November 2000 the detention orders for Joni Marques, Manuel da Costa, João da Costa, Paulo da Costa and Amelio da Costa expired and were not renewed until 16 February 2001, some 11 weeks later. The delay was a result of administrative problems and confusion within the court about serious crimes cases. At the time the Serious Crimes Panel, which has exclusive jurisdiction over the serious crimes cases, was not sitting. Responsibility for some of the cases had been taken by other panels in the court but had not been listed for hearing. At the joint detention review hearing on 16 February 2001 the detention orders of Gonsalo dos Santos, Alarico Fernades, Gilberto Fernandes and Mautersa Monis were also renewed - their orders had expired on 27 December 2000, 2 January 2001, 8 January 2001 and 4 February 2001 respectively.

Hilario da Silva, whose order had expired on 2 January 2001, was granted conditional release at the review hearing on the grounds that he was not considered to be at risk of absconding. It is unclear why other detainees in the group were not awarded conditional release but it is understood that their defence counsel did not appeal the decision.

Some of the delays in bringing cases to trial as well as problems relating to expiry of detention orders can be attributed to teething problems which could be expected in any situation where complex cases are being investigated and where the judicial system is still in the process of being established. Others reflect more systemic problems, including the slow pace of the serious crimes investigations, lack of clarity about administrative procedures and inadequate resources including translation capacity - a number of other pre-trial hearings have had to be postponed because indictments have not been translated into Bahasa Indonesia.

6.3 Recommendations

To UNTAET:

- ***Training and mentoring for public defenders*** - Enhance the support and training given to public defenders, including providing them with international mentors and practical training in international human rights standards to assist them in performing their duties effectively. International mentors should be selected on the basis of their expertise and practical experience and should be provided with interpreting and other support needed to carry out their duties effectively.

- ***Increase the capacity of public defenders*** - Consider ways of increasing the number of public defenders available through fast-track training of East Timorese. In the meantime, while the capacity of the East Timorese public defenders is limited, international lawyers could supplement them and at the same time help to increase their capacity by sharing skills and experience.

- ***The rights of suspects*** - Take steps to ensure that the rights of suspects are fully protected and that detainees are able to fully understand their rights, including their right to legal representation. This could involve a more detailed explanation by arresting officers as to what these rights are and why they are important and providing adequate numbers of qualified interpreters to work with Civpol. Other safeguards to protect the rights of suspects should be rigorously adhered to, including frequent access to the court, to doctors and their families.

- ***The right to redress*** - In accordance with provisions contained in Regulation No. 2000/30 on Transitional Rules of Criminal Procedure all necessary steps should be taken to ensure that any persons shown to have been the victims of human rights violations committed by UN officials, including arbitrary arrest, have the right to redress and receive adequate reparations, including compensation.

- ***Public education*** - Institute a program of public education on the criminal justice system, paying particular attention to the rights of detainees and why they are important.

To the international community:

- ***Resources for UNTAET*** - Immediately provide UNTAET with the necessary support including funding and personnel, to recruit and train new public defenders, to continue and improve the training of existing defenders and to enhance the mentor program for public defenders.

- ***Post-UNTAET support to protect the rights of suspects*** - Provide ongoing mentoring to all involved in criminal custody management, including wardens, public defenders, investigating judges and prosecutors, to keep them updated with international best practice.

7. Violations of human rights resulting from non-judicial mechanisms of justice

There is a strong emphasis on alternative justice mechanisms in East Timor. A substantial heritage of traditional law and alternative forms of justice has developed over the years - at least in part because the criminal justice systems introduced by Indonesia and prior to that, the Portuguese colonial administration, had not adequately served the needs of justice. The chronic delay in establishing an effective criminal justice system by UNTAET has reinforced an existing lack of confidence in formal justice systems and contributed to a continued reliance on alternative forms of justice.

The use of alternative, non-judicial criminal justice mechanisms can lead to serious human rights violations. The right to a fair trial and the rights to be free from discrimination and from torture and cruel, inhuman or degrading treatment can all be put at risk where informal mechanisms are used without safeguards.

Amnesty International found UNTAET's position on the application of alternative mechanisms and traditional justice to be ambiguous. UNTAET officials recognized that a dual system is currently operating and believed that, regardless of whether it is a good or bad thing, it is unavoidable while there is such limited capacity within the formal criminal justice system. There seemed to be a general acceptance which in some instances took the form of active encouragement, including by senior UNTAET officials, that communities should resolve conflicts and "minor crimes" within the community. However, there is no accepted definition of what constitutes a "minor crime".

Amnesty International fears that, rather than providing a backstop to the underdeveloped court system, the unregulated reliance on non-judicial mechanisms is in danger of undermining the very systems which UNTAET is trying establish. While so-called "traditional methods" of conflict resolution have their place in many societies, Amnesty International is concerned that those who most need the protection of a formal court system - especially vulnerable women and children - are those most likely to be coerced into a "traditional" resolution in the absence of clearly recognized procedures.

There appeared to be recognition by some officials of the limits of informal mechanisms and traditional justice and the need to prohibit practices which are inconsistent with internationally accepted standards for fair trial. However, UNTAET has undertaken no comprehensive assessment of such practices, including for their consistency with fair trial standards. Amnesty International is aware of one UNTAET study on traditional justice but this is for only one of the 13 Districts and should not be seen as representative. In informal discussions with East Timorese from different districts, Amnesty International delegates were struck by the diversity of mechanisms in different districts and the extent to which some of these systems had been developed relatively recently in response to Indonesian occupation. Moreover, there is no systematic monitoring of the way in which traditional law is being applied and, although Amnesty International has been informed that guidelines for law enforcement officials have recently been issued, there are still no guidelines for prosecutors and members of the judiciary or publicly available information about the relationship between such informal mechanisms and the formal judicial system.

In the meantime, different agencies, or individuals within the same agency, are applying different criteria to decide whether it is appropriate to employ traditional justice mechanisms and what standards should be applied. Although there were no written guidelines at the time, some Civpol officers explained that they suggest traditional justice as an option for those crimes deemed to be "less serious". In such a case, it was explained, that both parties must agree in writing - a requirement to ensure both parties are agreeing to the process voluntarily and to safeguard against double jeopardy. The prosecutor's agreement is required in advance, but in practice this did not happen in all cases. Other Civpol officers to whom Amnesty International spoke rejected the concept and insisted that all criminal cases, serious or minor, should be brought to court.

The resulting situation is one of confusion in which traditional justice and other informal mechanisms are being applied inconsistently without effective monitoring by, or full integration into, the formal judicial system. It has been used in cases of serious criminal offences involving violence, including murder and rape. There are cases where victims have been pressured to accept resolution by traditional means against their will and others where suspects have been denied their right to a fair trial by an independent tribunal.

7.1 Non-judicial mechanisms and the rights of women

Some of the more negative effects of informal non-judicial mechanisms are inevitably felt by groups or individuals who wield less power in the community. Such mechanisms are frequently used in cases of sexual and domestic violence against women and children. As vulnerable and less influential members of society, victims of such crimes are often unable to access the formal criminal justice system. Social pressure and shame may contribute to the reluctance of victims to report their case to the police. However, in the words of one East Timorese women's rights activist *"it sends the wrong message to perpetrators and communities - the reliance on traditional justice is not better than nothing, it makes the situation much worse because it limits attempts to develop judicial institutions and undermines the establishment of law and order."*[21]

Amnesty International gathered information on a number of cases of violent crimes against women and children. The cases were handled, at least initially, using informal non-judicial mechanisms. The attempt to resolve the case informally is known to have been resisted in one of the cases. According to one report, the family of a 12-year-old girl who was raped by her uncle in December 2000 accepted a traditional dress for the child as compensation from the uncle. Amnesty International was informed that the uncle has since been arrested and charged. In another case in which a young woman from the Comoro area of Dili was raped late last year a suspect was handed to the CNRT and local chief by the community and taken to the Falintil cantonment in Aileu for punishment. Family members of the victim have expressed concern that the person taken to Ailieu was not in fact the person responsible for the rape. A woman from the Kailako Sub-district of Maliana District, who alleged that she had been raped repeatedly over a period of some months in 1998 and 1999 by a local official, reported that her family had been forced to accept a dowry and had been threatened not to report the case to Civpol. According to the reports the victim had not wanted to accept the dowry, wishing instead to see the perpetrator bought to justice. It is thought that the case is currently under investigation by Civpol. In other cases victims have been forced to marry the perpetrator in order to "save their own reputations".

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[21] Interview with East Timorese women's activist and political leader, 7 March 2001.

One Civpol officer explained to Amnesty International that it was not unusual for someone who had initially chosen to pursue a case through the courts to come back the next day having changed their mind. He said that Civpol generally tried to go back to the victim's village to find out the reason for the change of mind but admitted that they really couldn't tell what kind of pressure people might be under from the local community. Amnesty International fears that, in a largely male dominated society, women may be particularly vulnerable to pressure to accept non-judicial resolutions.

Acts of violence against women constitute torture when they are of the nature and severity envisaged by the concept of torture as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the state has failed to provide effective protection. As the *de facto* government of East Timor, ETTA has an absolute responsibility to protect the East Timorese against violent abuses. Amnesty International believes that the informal non-judicial mechanisms do not afford women in East Timor adequate legal protection against abuses such as rape.

The organization is further concerned that the formal legal framework to protect women is also currently inadequate. In particular, provisions under KUHP do not reflect latest international standards with regard to violence against women. For example, domestic violence is not specified as a distinct crime and the legal definition of rape is limited to forced penetration of the vagina by the penis, thus other forced sexual actions are not covered. In addition, punishment for rape under KUHP is lenient compared to other jurisdictions.

Amnesty International believes that ETTA has a clear and immediate obligation to ensure that the East Timorese are not subjected to abuses such as rape. This commitment does not just apply to abuses carried out by the authorities under its control, but to abuses carried out by private actors. For example, the Declaration on the Elimination of Violence against Women says that states should "*exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or private persons*".

7.2 Non-judicial mechanisms and the rights of defendants

The unregulated application of traditional justice and other non-judicial mechanisms also has serious implications for the rights of suspects to a fair trial. At present, without any form of systematic monitoring or regulation, there are no guarantees that these practices are being applied in a manner which is consistent with international standards for fair trial. Rather there is evidence that such standards are not always met.

The risk of torture, ill-treatment or other forms of coercion exists where unregulated processes are carried out by individuals without the necessary training. Reports were received from several different sources about a case of a married couple who were tied up and illegally detained on the orders of community leaders in Caibada village, Baucau District over a marriage dispute. While illegally detained they were beaten and the woman was urinated on.

According to the reports the couple had been summoned by the village head on 7 October 2000 to answer demands that they separate so that the woman could return to her original husband whom she had married in 1972, but had separated from in 1976 after the Indonesian occupation when he joined the armed opposition group. The woman claimed that she had been forced to marry him by her family when still a minor and that he had been physically violent towards her. She subsequently married twice more, although only the first marriage was recognized by the Catholic Church. Although her first husband had also remarried in the intervening years, he now wanted his first wife to return to him - a demand that was being supported by community leaders.

When they were first summoned the couple initially hid from a group of youths armed with machetes and sticks who had arrived to collect them. Later the same day they presented themselves to the village head (*kepala desa*) and customary law expert (*kepala tokoh adat*) who oversaw a dispute settlement process. The local priest was asked to intervene but refused to assist the couple who were then tied up. Some seven hours later, Civpol offices arrived and tried unsuccessfully to negotiate the release of the two victims. According to reports received from local NGOs the two were then beaten, apparently because the community were angry that Civpol had been informed of the couple's plight. The couple managed to escape later the same day.

Suspects may also find themselves being tried and punished by their community and then subsequently investigated and brought to trial in the formal criminal justice system. Section 4.2 of the Transitional Code of Criminal Procedure protects against double jeopardy unless the proceedings in the other court: "*(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the court; or (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.*"

Because traditional and alternative justice practices are not routinely monitored it is often not possible to determine whether or not processes in each case have been conducted in accordance with international standards. Moreover, the absence of any established protocol defining the relationship between the formal judiciary and such informal mechanisms means that there is enormous scope for misunderstanding. In some cases there may be a deliberate intention to avoid criminal responsibility. In others, suspects may agree to submit themselves to a traditional justice process in good faith in the belief that it was a substitute for the formal judicial system and may then find themselves before the regular courts. The confusion that can arise was illustrated by a comment made by a detainee in Baucau prison to an Amnesty

International researcher. The detainee, who was awaiting trial on charges of maltreatment, explained that he could not understand why he had not been released because his family had since resolved his crime with their local community. He stood trial and was sentenced to two years' imprisonment in early May 2001.

7.3 Recommendations

To UNTAET:

- ***Review of non-judicial systems*** - Undertake a comprehensive assessment of all non-judicial or informal systems incorporating traditional law and processes in East Timor. The diversity of such mechanisms and the frequency with which they are used means that there is an urgent need to carry out a full review to establish what practices are being used, to prevent human rights violations from occurring and to develop detailed policy to ensure that the whole judicial system, formal or informal, protects human rights.

  In particular, the review should assess the extent to which such systems may contribute to human rights violations such as arbitrary detention and torture. It should pay particular attention to whether the needs of vulnerable and less influential groups, such as women, children and minorities, are addressed. This should involve establishing a sensitive methodology for carrying out the review whereby vulnerable groups are offered an opportunity to have input without fear of possible consequences such as retribution or social ostracism. Advice should be sought from local NGOs and other social networks with close relations with such groups.

- ***Immediate measures to protect against violations*** - Pending the outcome of a review, immediate measures should be taken to prevent further violations from occurring. These measures should include:

  - Strengthening the capacity of the Civpol's Vulnerable Persons Unit to investigate allegations of crimes against women, children and other vulnerable groups and provide them with the necessary protection from further abuse. The unit should be staffed by experts including officers with experience in dealing with sexual violence, gender violence and violence against children. It should have all the necessary resources to enable it to perform its role effectively, including qualified interpreters of which an adequate number should be female. A program to second and train East Timorese police officers and other relevant officials should be established with the goal of preparing them to take over the work of the unit from international staff at the earliest opportunity;

  - Assessing and empowering victim support services such as police-victim liaison and provision of safe-houses for victims of domestic violence, so that particularly vulnerable victims are confident and properly treated when reporting offences;

  - Developing a comprehensive program to inform the general public about their rights and the criminal justice system which is being developed, including how to access it and its relationship with informal justice mechanisms. The program should emphasise that all serious crimes must be subject to formal criminal investigations. Members of more vulnerable groups, such as women and children, should be prioritised in such a program;

- ***Protection for women*** - All forms of violence against women should be unequivocally condemned. Criminal law and procedures should be amended to ensure that they grant women effective protection against, and ensure the prosecution of, crimes directed at or disproportionately affecting women, as well as access to justice and effective remedies for those crimes. Institutional mechanisms should be established so that women and girls can report acts of violence against them in a safe and confidential environment, free from fear of retaliation

To the international community

- ***Resources for UNTAET*** - Provide UNTAET with the necessary resources, including independent experts and funding, to carry out a comprehensive review of non-judicial or informal mechanisms of justice. Resources should also be provided to enable UNTAET to take immediate measures to protect against human rights violations in the context of informal justice processes and to strengthen formal legal and institutional safeguards against violence against women.

- ***Post-UNTAET support*** - Commit resources to continue the development of an institutional and legal framework to protect and promote the rights of all East Timorese, including women and children, including their rights to fair trial and to freedom from torture, ill-treatment or other forms of cruel, inhuman or degrading treatment. Technical assistance and other resources should be provided to enable the future East Timor government to ratify and implement fully in law and in practice the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

8. Policing

Under Security Council Resolution 1272, UNTAET is mandated to "provide security and maintain law and order throughout the territory of East Timor. This role was elaborated in the 4 October 1999 letter of the UN Secretary-General which stated that: " *Two major goals will define the law and order strategy of UNTAET: the provision of interim law enforcement services and the rapid development of a credible, professional and impartial East Timorese police service*". Security Council Resolution 1272 also stated that all UNTAET personnel, which should include international police officers should be provided with "*appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions, negotiation and communication skills, cultural awareness and civilian-military coordination.*"

A contingent of around 1,200 international civilian police (Civpol) officers is deployed throughout East Timor to carry out law enforcement functions. Two Rapid Response Units (RRU), one based in Baucau and one in Dili consisting of around 120 officers each, are responsible for providing specialised capabilities for crowd control, operational support and standby rapid response capacity to the civilian police unit. Recruitment and training of officers for the East Timor national police service is in progress and, as of 30 April 2001, 706 East Timorese police officers had been recruited.

8.1 Civil disturbances in Baucau

Confidence among East Timorese in Civpol's ability to maintain law and order is low and a number of incidents in the last months have highlighted their inability to deal effectively with civil disturbances. In its discussions with senior Civpol officers in Baucau in early March 2001, Amnesty International noted a lack of awareness on their part of the environment they are operating in and what constitutes appropriate policing methods. It was explained to Amnesty International that the "*RRU with their sticks are the only people they*[the East Timorese] *have respect for... it is the language they understand.*" In light of events several days later, there is a clear need to reassess this approach, including by ensuring that policing methods do not contribute to an increase in levels of violence in East Timor.

During a three day period in early March 2001 there were a series of incidents in the town of Baucau which culminated in the burning of the town's mosque on 7 March 2001. The level of tension in Baucau, which is known to have particular security problems related to the presence of a group of ex-Falintil members and tensions between rival political groups, had been increasing for several days prior to the burning of the mosque. There had been a fight in the market place on 5 March 2001 and on the following day stones were thrown at UN facilities, including at a RRU patrol. RRU officers subsequently arrested 13 people. Several of those arrested on 6 March 2001 alleged that they had been hit with batons or rifle butts by members of the RRU.

The RRU officers in Baucau are from Jordan, a country known by the East Timorese to have close links to certain members of the family of former President Suharto of Indonesia.[22] These links have created suspicion of the Jordanian police officers among some East Timorese and may have contributed to ill-feeling towards them or to allegations against them being exaggerated. However, it is clear that arrest procedures were not followed by the RRU arresting officers, including that suspects were not informed of the reason for their arrest or the charges against them. The 13 were released later that night because of lack of evidence.

The arrests sparked protests and more stone throwing outside the Civpol compound for which another three people were arrested. Protests continued through the night and the next day there were further incidents including an attack on the vehicle of UNTAET's District Administrator which was hit with a rock and protests at the RRU compound, to where the unit had withdrawn. In its efforts to control the situation, the RRU was reported to have used slingshots to fire stones at the demonstrators. The mosque, which is also home to a number of Muslim families, was set fire to later that evening. A series of incidents over the past 18 months in which Muslims in East Timor have been threatened and intimidated by gangs, combined with the evident animosity in Baucau towards the Jordanian RRU, made it likely that the mosque might be targeted. However, no measures to protect it had been taken.

It was clear to the Amnesty International delegation, which was in Dili at the time having just returned from Baucau, that the necessary arrangements to respond to such incidents were not in place and procedures which should have been standard were not followed. Communication between UN officials in Baucau and between Baucau and Dili appear to have been poor as was the coordination between Civpol, RRU and PKF units. Methods employed by the RRU to control the disturbances were inappropriate and may have contributed to an escalation in the violence. Their inability to deal with the disturbance was compounded by a lack of interpreters which rendered effective communication with the protestors impossible - a problem which has affected the ability of Civpol officers throughout East Timor to carry out their duties effectively. Correct procedures for arrest were not followed and led to concerns regarding arbitrary detention.

An investigation was carried out on 11-12 March 2001 by UNTAET. The report has not been published although a number of its findings have been made public including that the RRU had not received training in applicable law and procedures or in human rights. Amnesty International also learnt that the RRU had not even been provided with basic cultural awareness training before being posted to the area. The UNTAET report recommended that the RRU be provided with training in human rights and applicable law and that the allegations against the RRU be the subject of an internal police investigation. The results of the investigation were not available at the time of writing.

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[22] President Suharto's son-in-law, former Lieutenant-General Prabowo Subianto, went to live in Jordan after he was dismissed from the military in August 1998 by a Military Honour Council for his role while commander of Special Forces Command (Kopassus) in the "disappearance" of a number of political activists, 13 of whom are still missing. He had previously done several tours of duty in East Timor where his name has become associated with some of the more serious human rights violations.

8.2 Disturbances in Viqueque and the need to protect UN local staff

Riots in the town of Viqueque a few days after the events in Baucau exposed similar problems with communications and coordination and also highlighted issues around the security of UN staff, in particular East Timorese staff members. A riot took place in Viqueque on 12 March 2001 after a 19-year old male was killed in a fight between two rival martial arts groups. The killing took place early in the morning in the Boromatam area of Viqueque town, although the deceased was originally from Makadiki village, Uatolari Sub-district, Viqueque District. Civpol and PKF failed to prevent a crowd of people armed with machetes and other weapons who had travelled from Uatolari Sub-district from entering the Boromatam area apparently to seek revenge for the killing. At one point it was reported that just two Civpol officers were left guarding the bridge where the road from Uatolari enters Viqueque, because the Thai battalion of the PKF had withdrawn from the roadblocks.

The Jordanian RRU arrived in Viqueque in the afternoon of 12 March 2001. An international aid worker, who came across a group of RRU members sitting on a wall close to where she had just watched a UN local staff member flee from an approaching crowd, was told that RRU could not act because they did not have maps and were not familiar with the town. Security for the international staff was also lacking since the UNTAET Headquarters in Viqueque, where international staff and some locals were seeking refuge, was left without security for several hours because members of the PKF which had been stationed at the compound had gone off duty and were not immediately replaced.

Two people were killed and some 30 houses burnt in the disturbances in Viqueque on 12 March 2001. In mid-April 2001 three people were arrested in connection with these events. Members of the judiciary in Baucau responsible for handling this case have since been subjected to threats by youths from Viqueque [see Section 4.3].

During the disturbances most of the UN local staff fled to the hills for safety including interpreters, which left the police and PKF without effective means of communicating with those taking part in the disturbances. The extreme vulnerability of UN local staff when violence erupts was highlighted by the events of 1999. In the run up to the popular consultation many UNAMET local staff and their families were repeatedly threatened, including with death, by militia. In the days following the vote at least eight UN local staff were unlawfully killed and two "disappeared". At the time no procedures for the security of local staff had been put in place by UNAMET and although a precedent was set when those East Timorese who were seeking refuge in the UNAMET Headquarters were evacuated to Australia together with the UN international staff in September 1999, those who had not made it to the UNAMET compound were left to fend for themselves.

The families of the victims are still waiting for compensation from the UN. There has recently been some sign that agreement may have been reached on at least some of the cases. However, efforts by UNTAET officials to secure compensation for them have been delayed by the apparent the lack of UN procedures on this issue.

Clearly the situation in East Timor is now very different than was the case in 1999. However East Timorese working for the UN continue to be at risk particularly in situations of civil disturbance, political violence, or where they are involved in dealing with other sensitive issues such as serious crimes or regular criminal investigations. Given the lessons of the past and in order that local UN staff are able to carry out their duties effectively and in safety, Amnesty International urges that security measures for the protection of UN local staff are put in place as a matter of priority.[23]

8.3 Recommendations

To UNTAET:

- ***Compliance of international law enforcement officials with human rights standards*** - Review the regulations, code of conduct and procedures for Civpol and undertake all necessary practical measures - including training - to ensure that all the actions of UNTAET law enforcement officials, including RRU officers, fully meet international human rights standards as well as applicable laws.
- ***Training East Timorese police officers in human rights standards*** - Ensure that all members of the new East Timor police force are provided with detailed, practical training in international human rights standards and that they are monitored to ensure that they comply fully with these standards when exercising their duties.
- ***Investigations of allegations of human rights violations*** - Ensure that all allegations of human rights violations committed by UNTAET or East Timorese law enforcement

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[23] UNTAET informed Amnesty International that since the disturbances in Baucau and Viqueque the Deputy Force Commander has been travelling to all districts to hold workshops, bringing together all component parts of ETTA and UNTAET at the district level, to ensure greater coherence, understanding of procedures and clarity of lines of command and communication.

officials are immediately and impartially investigated and that, where there is sufficient evidence, appropriate action is taken against the perpetrator. Victims must have the right to redress and should receive adequate reparations, including compensation.

To the international community:

- ***Resources for UNTAET*** - Provide UNTAET with the necessary personnel and resources to effectively police East Timor in full conformity with international human rights standards and to accelerate the recruitment and training of East Timorese police officers.

- ***Post UNTAET support for law enforcement*** - Commit resources, including funding and experts, to an ongoing program to support the establishment of the national East Timorese police force. The program should include comprehensive, practical training in international standards including those which relate to the rights of suspects, the use of force and firearms and torture and ill-treatment.

9. Delays in addressing past violations of human rights

9.1 The UN response to massive human rights violations in East Timor

The escalation of violence and massive human rights violations committed in East Timor in the weeks following the 4 September 1999 announcement of the results of the ballot met with international condemnation. A Security Council mission visited Dili and Jakarta from 8 to 12 September 1999 and reported that "*there was strong prima facie evidence of abuses of international humanitarian law committed since the announcement of the ballot results...*". It also concluded that the involvement of large elements of the Indonesian military and police in the violence was clear and recommended that the UN Security Council should institute action for the investigation of apparent abuses of international humanitarian law on the ground in East and West Timor since 4 September 1999.[24] The following day the UN Security Council adopted Resolution 1264 in which it condemned all acts of violence in East Timor and demanded that those responsible for such acts be brought to justice.

The violence was also condemned by the UN Secretary-General, and the UN High Commissioner for Human Rights. A special session of the UN Commission on Human Rights was called and on 24 September 1999 adopted a resolution in which it also condemned the widespread, systematic and gross violations of human rights and international humanitarian law.

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[24] Report of the Security Council Mission to Jakarta and Dili, S/1999/976, 14 September 1999.

An International Commission of Inquiry on East Timor (ICIET), established on the recommendation of the fourth special session of the Commission on Human Rights, visited East Timor and Jakarta Indonesia from 25 November to 8 December 1999. It concluded that "*there were patterns of gross violations of human rights and breaches of humanitarian law which varied over time and took the form of systematic and widespread intimidation, humiliation and terror, destruction of property, violence against women and displacement of people.*" It recommended that the investigations into the violations and those responsible must be continued, that full support should be given to UNTAET to carry out these investigations and that the UN should establish an international human rights tribunal to bring perpetrators to justice.[25] In a report published on 10 December 2000 three UN Special Rapporteurs, who had carried out investigations in East Timor the previous month, also recommended that the UN Security Council should consider the establishment of an international criminal tribunal on East Timor if efforts by the Indonesian government to bring perpetrators to justice did not yield results in a matter of months.[26]

Although there can be little doubt about the level of international concern at the time, justice for the victims has been slow to materialise. Separate investigations have been established in both Indonesia and East Timor. However, to date no suspects have been indicted or brought to trial in Indonesia and although trials in East Timor have begun, progress has been slow.

9.2 Obstacles to justice for serious crimes in East Timor

Investigations into the events of 1999 are carried out in East Timor by the UNTAET Serious Crimes Unit. Cases are heard by a special panel of three judges, one East Timorese and two international, within the Dili District Court. The panel has exclusive jurisdiction over the serious criminal offences of genocide, war crimes and crimes against humanity. It also has jurisdiction over murder, sexual offences and torture insofar as the offence was committed in the period between 1 January to 25 October 1999.

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[25] Report of the International Commission of Inquiry on East Timor to the UN Secretary-General, A/54/726, 31 January2000.

[26] The UN Special Rapporteurs on extrajudicial, summary or arbitrary executions, on torture and on violence against women, its causes and consequences visited East Timor from 4 - 10 November 1999. See UN Document A/54/660, 10 December 1999.

The Serious Crimes Unit has identified ten incidents of major human rights violations which it has prioritised for investigation.[27] It is also pursuing individual cases of murder and other offences of suspects who are already in detention. The first judgment on an individual case was delivered on 25 January 2001 when João Fernandes, a former member of the Red White Tornado (*Dadurus Merah Putih*) militia group, was sentenced to 12 years' imprisonment for the murder of a village chief, Domingos Gonsalves Pereira, in Bobonaro District on 8 September 1999. The prisoner escaped from Gleno prison in March 2001. He has since been recaptured. A number of other individual cases have been, or are in the process of being, brought to trial.

The first indictments for crimes against humanity, which had been promised for many months, were finally filed on 11 December 2000 amid considerable publicity [See Section 6.2].The trial began in July 2001. A second indictment of crimes against humanity was filed on 6 February 2001 against five people, including an Indonesian military officer, who are suspected of involvement in murder, rape, torture, unlawful deprivation of liberty, inhuman and degrading treatment and persecution in Lolotae Sub-district, Bobonaro District both before and after the popular consultation. However, the preliminary hearing in this case had been postponed on five separate occasions by the beginning of June 2001. The first preliminary hearing was on 6 April 2001 but postponed twice to give the prosecution time to file an amended indictment. The amendment then required translating which contributed to further delays.

Concerns about the slow progress of bringing to justice perpetrators of the crimes committed in 1999 have frequently been raised both outside and inside UNTAET. In a report in November 2000 which followed a visit to East Timor by members of the Security Council it was stated that *"the Mission had noticed shortcomings in the implementation of justice in East Timor... It urged that measures be undertaken to address this problem in order to respond sufficiently to the expectation of East Timorese for justice."*[28] In its August 2000 report,*East Timor: Building a new country based on human rights*, Amnesty International recognized the size and complexity of the task, but expressed concern at the slow pace at which the investigations were proceeding. East Timorese NGOs, many of whom have both expertise in human rights investigations and a first hand knowledge of the 1999 events, have lost confidence in the process to such an extent that key organizations are now unwilling to cooperate with the Serious Crimes Unit.

There have been many reasons given to justify the slow progress but ultimately most stem from a combination of a lack of resources and staff, poor management and inadequate political support. Although some senior UNTAET officials are clearly aware of the problems and some efforts have been made to identify the causes of the problems and to secure necessary resources to remedy these difficulties, the actions taken so far have not been effective.

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[27] For details of the ten cases see UNTAET Daily Briefing, 25 May 2001 - Fact Sheet Update - Serious Crimes and Justice for Victims of 1999 Violence.

[28] Report of the Security Council Mission to East Timor and Indonesia (9-17 November 2000), S/2000/1105.

There has been a continual shortage of staff, including investigators and prosecutors with experience and expertise in investigating and prosecuting cases of human rights violations and crimes against humanity. At one point in December 2000 there was just one prosecutor in the unit. The situation has improved but the unit is still short of qualified staff. There are currently one East Timorese and six international prosecutors. In order to complete the identified caseload by December 2001, UNTAET requested funding to employ another four international and three East Timorese prosecutors. In mid-May 2001 only half of the 30 investigator posts were filled. Forensic capacity, which has not always been available, is currently at two anthropologists and one, part-time, pathologist. The number of interpreters have increased since Amnesty International's visit in March 2001 from four to 12 of whom four are international and eight are East Timorese. The number of female interpreters has also increased to four. However, the total number of interpreters is still two short of the 14 which UNTAET has said that it needs.

While there are several excellent staff among them, this small core is not enough to deal with the enormity of the task. Concerns have been raised that some of the investigators and prosecutors have no experience of human rights investigations or of applying international law. The skill level of some of the interpreters is also considered to be below what is necessary for the complex work carried out by the Serious Crimes Unit.

The quality of the work has also been undermined by the high turnover of staff. Short contracts, particularly for Civpol investigators, has meant that continuity has been lost. Low morale has also contributed to the high staff turnover. One tragic consequence of this has been that some survivors of the 1999 violence have been interviewed many times by different Serious Crimes Unit staff, adding to the trauma already experienced by these people.

Other key resources have also been in short supply. There has been a chronic shortage of vehicles which has slowed down investigations in the field. The important task of building a central database to make it possible to store, track and search for data to support the investigation on the most basic level, and also to provide support for crimes against humanity cases (where detailed cross- checking is needed to establish that the nature of the crimes is widespread and systematic) which was begun in early 2000, had not been completed at the time of writing.

Little attention appears to have been taken of the risk to local interpreters working on these sensitive cases. The risk of intimidation or worse is very real and needs to be addressed. One East Timorese who had worked as an interpreter for Civpol told Amnesty International that he had asked to be transferred from the district in which he was working to Dili because he had received threats in connection with his work. His request was turned down so he left his job. Lack of female interpreters has meant that male interpreters have had to be used in interviews with victims of sexual violence.

Court facilities are also inadequate. With only one Serious Crimes Panel, the capacity to hear serious crimes cases is limited. UNTAET has requested resources to establish and support a second panel. Amnesty International was informed that this would be in place by April or May 2001, but the second panel had not been established by late June 2001.

Courtroom interpreting capacity is also insufficient for the special needs of the serious crimes cases. The Serious Crimes Panel works in four different languages - English, Portuguese, Indonesian and Tetum. It does not currently have enough qualified interpreters and there is serious concern that this may undermine the rights of suspects to adequate facilities to prepare a defence, to implement the principle of equality of arms, to effective examination of witnesses and the right to fair trial. These rights risk being further undermined because, while there are international prosecutors and judges involved in these cases, the defence counsel are East Timorese public defenders who, although assisted by international mentors, have only limited experience of defending suspects accused of ordinary crimes let alone those facing charges for crimes against humanity and other crimes under international law.

The lack of resources has been in part a systemic problem related to the organizational structure of ETTA and a lack of flexibility in allocating funds and resources. Others relate more to poor management and a failure to deal with well-recognized problems within the Serious Crimes Unit, including structural problems and personnel issues. However, the international community has also failed to support UNTAET's efforts and to pay sufficient attention to the way in which investigations are progressing.

In response to the concerns raised by members of the Security Council after their November 2000 visit to East Timor, UNTAET provided a detailed list of outstanding staff and equipment requirements for the investigation and prosecution of serious crimes. The list included additional prosecutors, interpreters, investigators, a second Serious Crimes Panel as well as basic resources necessary to ensure the staff can do their jobs, such as transport, tape recorders, audio equipment, laptop computers, printers, photocopiers and mobile and satellite phones. The list was submitted to possible donors in December 2000 and again in January 2001. To date only the United Kingdom government has indicated that it will provide some of the additional funds needed.

In the meantime, even the limited target of the ten priority cases out of the thousands of violations which took place during 1999 now seems unlikely to be reached by the end of this year - the point in time the General Prosecutor has said that all indictments should be filed. Trials in these cases are expected to take place during 2002, but without more court capacity it seems unlikely that this target can be met either.

9.3 Lack of Cooperation by Indonesia

Pursuing investigations in some important cases has been made impossible by circumstances which are beyond the control of UNTAET. Much of the evidence and most of the key suspects, including Indonesian military and government officials, militia leaders and some East Timorese who had held office during Indonesian occupation, are now in Indonesia. The Indonesian authorities have initiated their own investigations into the events in East Timor in 1999 but have so far failed to bring perpetrators to justice in its own courts. Moreover, the Indonesian government has also not cooperated with UNTAET to assist the process of investigations and trials in East Timor.

On 6 April 2000, a Memorandum of Understanding (MoU) was signed between the Special Representative of the Secretary General and the then Indonesian Attorney General in which both sides agreed to provide each other with assistance in investigations and court proceedings including by interviewing witnesses, exchanging evidence and transferring suspects.[29] UNTAET has made efforts to fulfil its side of this agreement and in July 2000 it assisted a team of investigators from Indonesia to interview witnesses and gather other evidence on five key cases in East Timor. However, this assistance has not been reciprocated by Indonesia. A series of visits have been made by members of the Serious Crimes Unit to the Indonesian capital, Jakarta, to request evidence and to interview suspects but in each case they have returned to East Timor empty handed. Indonesia has refused to respond to requests by UNTAET to transfer suspects to East Timor for trial.

The chequered progress of Indonesia's own investigations has exposed the extent of both the lack of ability and will by the authorities there to bring to justice Indonesian nationals who are responsible for crimes committed in East Timor. One obstacle after another has been thrown up in the path of investigations and trials. Most recently, a Presidential Decision issued on 23 April 2001 (Keppres 53/2001) approved the establishment of an *ad hoc* Human Rights Court for East Timor but limited its jurisdiction only to cases which took place after the 30 August 1999 ballot. Automatically this meant that suspects in two of the cases which had been investigated by the Attorney General's office could not be brought to trial in the *ad hoc* court. These two cases - the massacre of civilians by militia in Liquiça church on 6 April 1999 and the unlawful killing of at least 12 people on 17 April 1999 at the house of Manuel Carrascalao in Dili - were among the worst, but nevertheless only two, of many incidents of human rights violations which took place in the months preceding the vote.

Strong national and international protest about the limited jurisdiction of the court resulted in a commitment from the former Minister of Justice that the Presidential Decision would be reviewed. The Decision had not been amended by the beginning of July 2001. Nor has any action been taken to revise the legislation which provides for the establishment of Human Rights Courts (Law No. 26/2000 concerning Human Rights Courts) so that it is fully consistent with international law and standards. The legislation on Human Rights Courts was adopted by the Indonesian parliament on 6 November 2000 and although an improvement on earlier drafts, it still contains provisions which are either inconsistent with international standards or otherwise risk jeopardising the right to fair trial by the suspects or delivering justice to the victims. Amnesty International has raised these and other concerns both directly in meetings with Indonesian government officials and in writing.[30] In the meantime, the crisis surrounding the possible impeachment of President Wahid has largely immobilised the Indonesian government and made it unlikely that trials will take place in the near future.

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[29] Memorandum of Understanding between the Republic of Indonesia and the United Nations Transitional Administration in East Timor Regarding Cooperation in Legal, Judicial and Human Rights Related Matters. 6 April 2000

The failure by the Indonesian authorities to fulfil their commitment to bring perpetrators to justice makes it all the more important that UNTAET conducts effective investigations into the 1999 events and brings those perpetrators that it can to trial in processes which comply with international standards of fairness. Although in the short-term it may only be possible to arrest and try lower-level militia members who have returned to East Timor, successful prosecutions in these cases will at least begin the process of delivering justice to the victims and help reveal the full truth about the crimes committed and precisely where command responsibility for them lies. It will also make an important contribution to the process of reconciliation in East Timor and help towards the successful reintegration of former militia members or pro-Indonesia supporters back into their communities in East Timor.

9.4 The future of UNTAET investigations and prospects for truth and reconciliation.

It is clear that much work will still need to be done in East Timor after to complete the work of the Serious Crimes Unit after UNTAET's mandate expires in January 2002. Amnesty International is concerned by the lack of concrete plans for the continuation of the work of the Serious Crimes Unit after this date. Apart from resolving the ten priority cases there appears to be no strategy for investigating other cases which took place during 1999 or indeed the thousands of human rights violations which took place in previous years which, in the long-run, must be addressed for the sake of truth and justice. A key failing has been the lack of any program for capacity-building among East Timorese to prepare them to take over this work in the future. The majority of the key posts in the unit are held by international staff - there is still only one East Timorese prosecutor in the Serious Crimes Unit and no local investigators. For sometime to come it will therefore be necessary for international experts to continue the work.

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[30] See Amnesty International documents: *Indonesia: Comments on the draft law on Human Rights Tribunals*, AI Index: ASA 21/25/00, June 2000 and *Indonesia: Comments on the Law on Human Rights Courts (Law No.26/2000)*, AI Index ASA 21/005/2001, February 2001. In February 2001 an Amnesty International delegation held meetings with senior government officials in Jakarta including, the Attorney General, the Coordinating Minister for Political, Social and Security Affairs, representatives of the Ministry Justice and Human Rights and Ministry for Foreign Affairs, in which it raised a range of issues, including the East Timor investigations and impunity in Indonesia in general.

In the meantime, arrangements are being made for the establishment of a Commission for Reception, Truth and Reconciliation (CRTR). Legislation for the CRTR was adopted by the National Council on 19 June 2001. If all goes according to plan the Commission is expected to be established later this year.

The legislation provides for the establishment of a CRTR composed of five to seven National Commissioners and a minimum of 25 Regional Commissioners in up to six Regional Offices. Among its key objectives will be to: inquire into human rights violations that have taken place in the context of the political conflicts in East Timor (between 25 April 1974 and 25 October 1999); establish the truth and report on these violations; identify practices and policies which led to violations and make recommendations to prevent their recurrence; refer cases where appropriate to the Office of the General Prosecutor for prosecution; promote reconciliation and the reception and reintegration of individuals who have caused harm to their communities through the commission of minor criminal offences and other harmful acts through the facilitation of community-based mechanisms for reconciliation.

Amnesty International considers that the CRTR for East Timor could make a contribution towards providing a full account of past violations and providing victims and their communities with partial redress. It may also play an important role in reducing the likelihood of conflict and acts of revenge against suspects and provide an incentive to return to East Timorese who are still in Indonesia and who may have perpetrated crimes or are afraid to return to their communities after such a long absence.

It is an important principle that truth commissions should not be seen as an alternative to justice but should supplement judicial processes and should not in any way interfere with a state's responsibility under international legal standards to bring perpetrators of human rights violation to justice. Amnesty International therefore welcomes the provision in the legislation for serious crimes cases to be referred to the General Prosecutor's Office but seriously doubts whether the capacity currently exists to process these cases effectively or in a timely fashion. Under the legislation all statements are to be referred to the General Prosecutor's Office where the final decision will be made on whether they are suitable for the Community Reconciliation Process or whether the individual concerned will be subject criminal investigations. Given the limited capacity in the General Prosecutor's Office and the current problems in the Serious Crimes Unit, its plans to downsize its operations in the coming months and its failure to build local capacity to continue its work, further practical consideration must urgently given to how decisions to prosecute can be made in the required time and how the potentially significant number of new criminal cases which will be identified through the Reception, Truth and Reconciliation process will be investigated and prosecuted.

While it is important that the CRTR should have adequate resources, it is equally important that it should not divert resources away from the establishment of sound judicial mechanisms, which must be in place before the CRTR begins to operate. It should also avoid placing extra pressure on still fragile institutions such as the public defenders service. Provision is made in the legislation for persons who are invited or required to appear before the CRTR to be represented by a lawyer and for a lawyer to be appointed by the CRTR if the person cannot afford to pay for a lawyer themselves. Amnesty International regards this as an important safeguard for the rights of victims and witnesses, but without additional capacity the burden on the existing public defenders service, which is already known to be insufficient, would be untenable.

9.5 Recommendations

To UNTAET:

- ***Audit*** - Institute an immediate external audit of the Serious Crimes Unit. The purpose of such an audit should be two-fold. It should look at the process of criminal investigations and prosecutions to identify how the process can be accelerated and made more effective in a manner fully consistent with the right to fair trial. Such a review should be undertaken by independent experts with practical experience in running a criminal justice system. This audit, or possibly another audit, should also address issues of resources to ensure that existing resources are being used effectively and to identify what further resources may be required. The results of these audits should be made public and the recommendations acted upon.

- ***Remedial action*** - Take steps to address some of the more immediate problems within the Serious Crimes Unit, including by ensuring that the unit has adequate resources; that staff employed or seconded to the unit have the necessary qualifications and practical experience and that staff who are unqualified are removed or reassigned to positions appropriate to their qualifications and experience; that more effective strategies for prosecution are developed and the work of investigators and prosecutors is better coordinated so that delays and duplication are avoided; and that a central database is put in place without further delay.

- ***Planning*** - Develop detailed plans for an investigation and prosecution strategy of serious crimes and other human rights violations committed in East Timor both in 1999 and in the preceding years. This should include plans for developing capacity among the East Timorese to start taking over responsibility for this process as soon as possible to help to build confidence in the criminal justice system. The planning process should be done in close cooperation with those involved in the establishment of the Reception, Truth and Reconciliation Commission.

- ***Commission for Reception, Truth and Reconciliation*** - Ensure that the CRTR effectively complements and does not in anyway undermine or bypass the process of bringing to justice perpetrators of serious crimes and other human rights violations. Before the CRTR is set up there should be a functioning judicial system capable of pursuing cases which are referred to it, in processes which conform to international standards for fair trial.

To the international community:

- ***Justice*** - It is the first duty of the state in which crimes against humanity and other serious crimes were committed to prosecute these crimes. In the case of East Timor this means UNTAET and, because of the historical context, Indonesia. Successful prosecutions in Indonesia and East Timor in local courts would be the best option as it would contribute to the strengthening of local justice systems and would mean that the process of rebuilding society and encouraging reconciliation would be facilitated.

To ensure successful prosecutions the international community must take the following measures:

  - ***Support for UNTAET*** - Provide UNTAET with all the necessary support, including funding, technical assistance and expert personnel, to accelerate and improve the process of investigating and prosecuting serious crimes in East Timor. Donors should actively evaluate their own contributions, including seconded staff to ensure that they are being used to maximum effect.

  - ***Future mandate for serious crimes investigations*** - Ensure that there is an explicit mandate for the serious crimes investigations to be continued after UNTAET's own mandate expires on 31 January 2002. Funding, resources and other necessary support should be provided so that investigations into the events of 1999 can be completed and perpetrators bought to trial and so that serious crimes committed in previous years are also addressed.

  - ***Indonesia's cooperation with UNTAET*** - Urge the Indonesian authorities to fulfil their commitments under the Memorandum of Understanding of 6 April 2000 to cooperate fully with UNTAET in the investigation and prosecution of crimes which took place in East Timor during 1999.

- ***Trials in Indonesia*** - Demand that the Indonesian government fulfil its commitments to bring to justice its own nationals responsible for crimes committed in East Timor in 1999 and to reform and strengthen its justice system so that these and the many other human rights violations committed in East Timor and in Indonesia itself can be brought to trial in accordance with international standards for fair trial. Funding and technical assistance should be provided as necessary.

- ***International Criminal Tribunal on East Timor*** - If Indonesia proves unable or unwilling to bring those responsible for war crimes, crimes against humanity and other crimes in East Timor to justice, consideration must be given to credible alternatives. These alternatives could include the establishment of a properly funded and staffed International Criminal Tribunal on East Timor, with a broad mandate, in accordance with the recommendations of the ICIET and UN Special Rapporteurs. The possibility of prosecutions in third countries able and willing to prosecute and punish crimes against humanity, war crimes and other crimes which are subject to universal jurisdiction should also be considered. Such trials, like trials in Indonesian courts, would be a fraction of the cost of trials in an international criminal tribunal.

10. Conclusion

Amnesty International offers this report, and the recommendations in it, in the spirit of cooperation and hopes that it will contribute to the founding of the new state of East Timor which has the promotion and protection of human rights at its core. The organization recognizes the complex nature of the tasks which UNTAET face in East Timor. The mandate is overwhelming in its magnitude and the task is made more difficult because East Timor is emerging from a long period of repression and violence. Nevertheless, Amnesty International stresses the fact that UNTAET must set the standards in East Timor by upholding the highest standards of human rights at all times.

Given that UNTAET's mandate will not have been fulfilled by the end of January 2002, Amnesty International urges UN member states to ensure that the UN presence after this date has all the necessary resources to complete the task UNTAET was given in October 1999. If the opportunity to assist the East Timorese to build a country based on human rights is not to be lost, support for protecting and promoting human rights must be a central component of the future UN presence in East Timor.

Appendix 1: UN Security Council Resolution 1272 (1999)

Adopted by the Security Council at its 4057th meeting on 25 October 1999

The Security Council

Recalling its previous resolutions and the statements of its President on the situation in East Timor, in particular resolutions 384 (1975) of 22 December 1975, 389 (1976) of 22 April 1976, 1236 (1999) of 7 May 1999, 1246 (1999) of 11 June 1999, 1262 (1999) of 27 August 1999 and 1264 (1999) of 15 September 1999,

Recalling also the Agreement between Indonesia and Portugal on the question of East Timor of 5 May 1999 and the Agreements between the United Nations and the Governments of Indonesia and Portugal of the same date regarding the modalities for the popular consultation of the East Timorese through a direct ballot and security arrangements (S/1999/513, annexes I to III),

Reiterating its welcome for the successful conduct of the popular consultation of the East Timorese people of 30 August 1999, and taking note of its outcome through which the East Timorese people expressed their clear wish to begin a process of transition under the authority of the United Nations towards independence, which it regards as an accurate reflection of the views of the East Timorese people,

Welcoming the decision of the Indonesian People's Consultative Assembly on 19 October 1999 concerning East Timor,

Stressing the importance of reconciliation among the East Timorese people,

Commending the United Nations Mission in East Timor (UNAMET) for the admirable courage and determination shown in the implementation of its mandate,

Welcoming the deployment of a multinational force to East Timor pursuant to resolution 1264 (1999), and recognizing the importance of continued cooperation between the Government of Indonesia and the multinational force in this regard,

Noting the report of the Secretary-General of 4 October 1999 (S/1999/1024),

Noting with satisfaction the successful outcome of the trilateral meeting held on 28 September 1999, as outlined in the report of the Secretary-General,

Deeply concerned by the grave humanitarian situation resulting from violence in East Timor and the large-scale displacement and relocation of East Timorese civilians, including large numbers of women and children,

Reaffirming the need for all parties to ensure that the rights of refugees and displaced persons are protected, and that they are able to return voluntarily in safety and security to their homes, Reaffirming respect for the sovereignty and territorial integrity of Indonesia,

Noting the importance of ensuring the security of the boundaries of East Timor, and noting in this regard the expressed intention of the Indonesian authorities to cooperate with the multinational force deployed pursuant to resolution 1264 (1999) and with the United Nations Transitional Administration in East Timor,

Expressing its concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor, stressing that persons committing such violations bear individual responsibility, and calling on all parties to cooperate with investigations into these reports,

Recalling the relevant principles contained in the Convention on the Safety of United Nations and Associated Personnel adopted on 9 December 1994,

Determining that the continuing situation in East Timor constitutes a threat to peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides to establish, in accordance with the report of the Secretary-General, a United Nations Transitional Administration in East Timor (UNTAET), which will be endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice;

2. Decides also that the mandate of UNTAET shall consist of the following elements:

(a) To provide security and maintain law and order throughout the territory of East Timor;

(b) To establish an effective administration;

(c) To assist in the development of civil and social services;

(d) To ensure the coordination and delivery of humanitarian assistance, rehabilitation and development assistance;

(e) To support capacity-building for self-government;

(f) To assist in the establishment of conditions for sustainable development;

3. Decides further that UNTAET will have objectives and a structure along the lines set out in part IV of the report of the Secretary-General, and in particular that its main components will be:

(a) A governance and public administration component, including an international police element with a strength of up to 1,640 officers;

(b) A humanitarian assistance and emergency rehabilitation component;

(c) A military component, with a strength of up to 8,950 troops and up to 200 military observers;

4. Authorizes UNTAET to take all necessary measures to fulfil its mandate;

5. Recognizes that, in developing and performing its functions under its mandate, UNTAET will need to draw on the expertise and capacity of Member States, United Nations agencies and other international organizations, including the international financial institutions;

6. Welcomes the intention of the Secretary-General to appoint a Special Representative who, as the Transitional Administrator, will be responsible for all aspects of the United Nations work in East Timor and will have the power to enact new laws and regulations and to amend, suspend or repeal existing ones;

7. Stresses the importance of cooperation between Indonesia, Portugal and UNTAET in the implementation of this resolution;

8. Stresses the need for UNTAET to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to these institutions of its administrative and public service functions;

9. Requests UNTAET and the multinational force deployed pursuant to resolution 1264 (1999) to cooperate closely with each other, with a view also to the replacement as soon as possible of the multinational force by the military component of UNTAET, as notified by the Secretary-General having consulted the leadership of the multinational force, taking into account conditions on the ground;

10. Reiterates the urgent need for coordinated humanitarian and reconstruction assistance, and calls upon all parties to cooperate with humanitarian and human rights organizations so as to ensure their safety, the protection of civilians, in particular children, the safe return of refugees and displaced persons and the effective delivery of humanitarian aid;

11. Welcomes the commitment of the Indonesian authorities to allow the refugees and displaced persons in West Timor and elsewhere in Indonesia to choose whether to return to East Timor, remain where they are or be resettled in other parts of Indonesia, and stresses the importance of allowing full, safe and unimpeded access by humanitarian organizations in carrying out their work;

12. Stresses that it is the responsibility of the Indonesian authorities to take immediate and effective measures to ensure the safe return of refugees in West Timor and other parts of Indonesia to East Timor, the security of refugees, and the civilian and humanitarian character of refugee camps and settlements, in particular by curbing the violent and intimidatory activities of the militias there;

13. Welcomes the intention of the Secretary-General to establish a Trust Fund available for, inter alia, the rehabilitation of essential infrastructure, including the building of basic institutions, the functioning of public services and utilities, and the salaries of local civil servants;

14. Encourages Member States and international agencies and organizations to provide personnel, equipment and other resources to UNTAET as requested by the Secretary-General, including for the

building of basic institutions and capacity, and stresses the need for the closest possible coordination of these efforts;

15. Underlines the importance of including in UNTAET personnel with appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions, negotiation and communication skills, cultural awareness and civilian-military coordination;

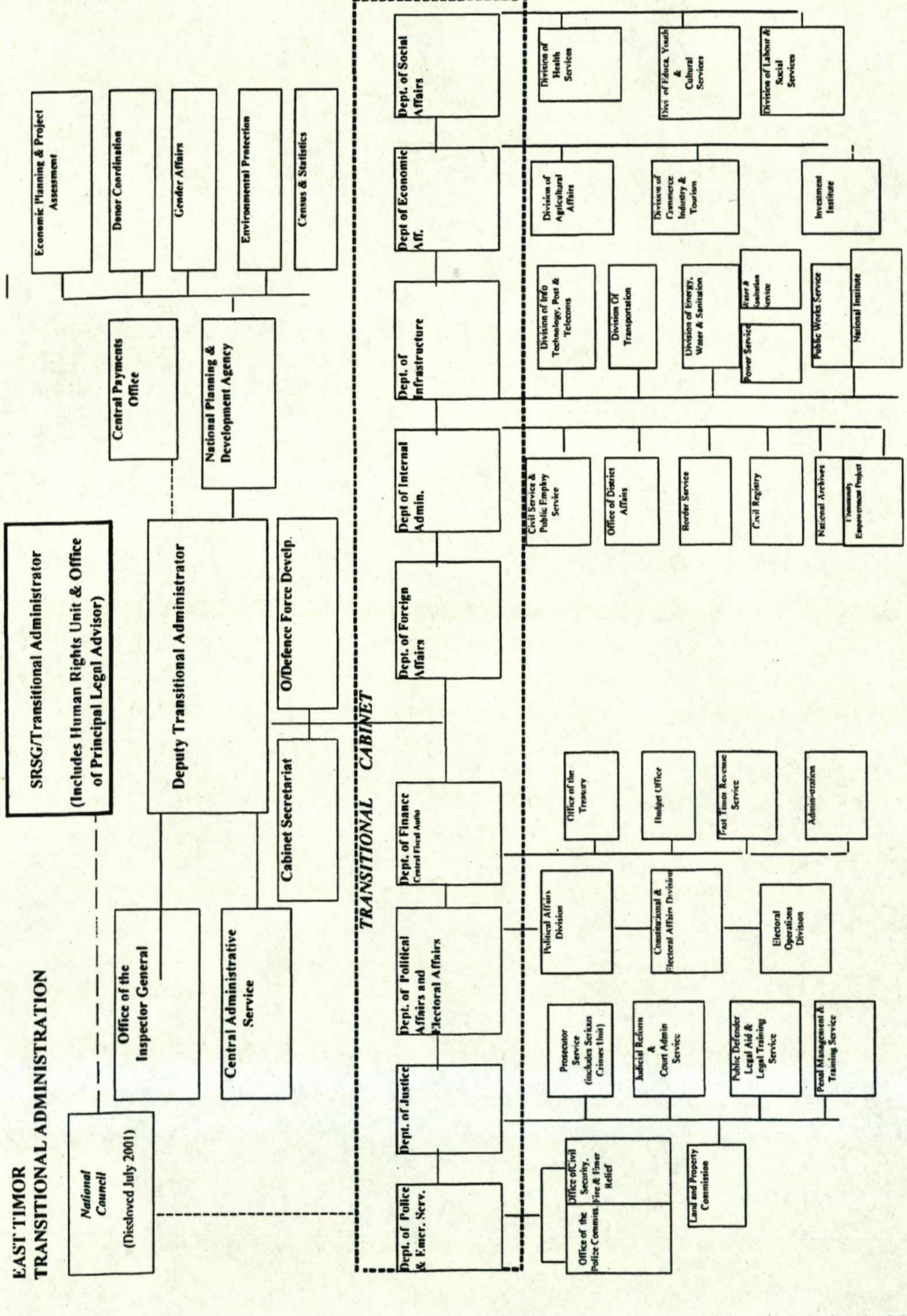
16. Condemns all violence and acts in support of violence in East Timor, calls for their immediate end, and demands that those responsible for such violence be brought to justice;

17. Decides to establish UNTAET for an initial period until 31 January 2001;

18. Requests the Secretary-General to keep the Council closely and regularly informed of progress towards the implementation of this resolution, including, in particular, with regard to the deployment of UNTAET and possible future reductions of its military component if the situation in East Timor improves, and to submit a report within three months of the date of adoption of this resolution and every six months thereafter;

19. Decides to remain actively seized of the matter.

Appendix 2: Diagram of ETTA Structure


EAST TIMOR
TRANSITIONAL ADMINISTRATION
SRSG/Transitional Administrator (Includes Human Rights Unit & Office of Principal Legal Advisor)
National Council (Dissloved July 2001)
Office of the Inspector General
Deputy Transitional Administrator
Central Payments Office
National Planning & Development Agency
Economic Planning & Project Assessment
Donor Coordination
Gender Affairs
Environmental Protection
Census & Statistics
Central Administrative Service
Cabinet Secretariat
O/Defence Force Develp.
TRANSITIONAL CABINET
Dept. of Police & Emer. Serv.
Dept. of Justice
Dept. of Political Affairs and Electoral Affairs
Dept. of Finance Central Fiscal Auth
Dept. of Foreign Affairs
Dept of Internal Admin.
Dept. of Infrastructure
Dept of Economic Aff.
Dept. of Social Affairs
Office of the Police Commiss.
Office ofCivil Security, Fire & Emer Relief
Land and Property Commission
Prosecutor Service (includes Serious Crimes Unit)
Judicial Reform & Court Admin Service
Public Defender Legal Aid & Legal Training Service
Penal Management & Training Service
Political Affairs Division
Constitutional & Electoral Affairs Division
Electoral Operations Division
Office of the Treasury
Budget Office
East Timor Revenue Service
Admin-stration
Civil Service & Public Employ Service
Office of District Affairs
Border Service
Civil Registry
National Archives
Community Empowerment Project
Division of Info Technology, Post & Telecoms
Division Of Transportation
Division of Energy, Water & Sanitation
Power Service
Water & Sanitation Service
Public Works Service
National Institute
Division of Agricultural Affairs
Division of Commerce Industry & Tourism
Investment Institute
Division of Health Services
Divi. of Educa. Youth & Cultural Services
Division of Labour & Social Services